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IN THE

# Supreme Court of the United States

October Term, 1994

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JACOB FRAIDIN, et al.,

*Petitioner,*

v.

ANDRE R. WEITZMAN, et al.,

*Respondents*

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## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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## PETITION FOR A WRIT OF CERTIORARI

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136 pp

## QUESTIONS PRESENTED

1. Do the due process standards as to punitive damages, enunciated by this Court in *Pacific Mutual Life Insurance Co. v. Haslip*, require that new evidence concerning a defendant's financial condition be considered at any new hearing or new trial on damages, particularly if there has been a change in that condition since the original damage award?

2. Did the punitive damages figure entered at the remand hearing in this matter comply with due process requirements, especially in view the conduct supposedly supporting such damages?

3. Was the punitive damage award so excessive as to violate due process?

## PARTIES TO THE PROCEEDING

The parties to the proceeding, including those noted in the caption of this case, are:

Jacob Fraidin, Petitioner,

Pacific Mortgage and Investment Group, Ltd. (a party to the previous matters but not a Petitioner here),

North American Credit Corporation (a party to the previous matters but not a Petitioner here),

Andre Weitzman, Respondent,

Sheldon Braiterman, Respondent, and

Braiterman and Weitzman, P.A., Respondent.

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# PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

---

Jacob Fraidin, proceeding pro se, under appropriate rules of this Court, requests that this Court issue of writ of certiorari to the Court of Special Appeals of Maryland.

## OPINIONS BELOW

The case was decided by the Court of Special Appeals on March 29, 1994 (*Jacob Fraidin, et al. v. Andre Weitzman, et al.* Court of Special Appeals, No. 935, September Term, 1993). The opinion is set forth in full in the Appendix to this Petition, beginning at App. 1a.

The remand hearing on punitive damages before the Circuit Court for Baltimore City, which followed an earlier appeal after the initial trial of this matter, was held on February 25, 1993. (See App. 51a et seq.). At the conclusion of that hearing, the Circuit Court determined that the punitive damages would be reduced by half.

The matter originally arises from a jury trial in the Circuit Court for Baltimore City on a multi-count Complaint by Respondents Andre Weitzman, Esq. and Sheldon Braiterman, Esq. (as Plaintiffs) against Defendants Jacob Fraidin (Petitioner or Mr. Fraidin) and North American Credit Corporation and Pacific Mortgage & Investment Group, Ltd. (the Corporations) and other Defendants not part of this Petition. The action, brought by the two attorneys, involved efforts by Mr. Fraidin on behalf of himself and the Corporations, to settle a jury verdict against him and those corporations on a claim brought by a husband and wife (through the two attorneys) alleging alleged irregularities in a mortgage loan. The attorneys' action alleged tortious interference with contract and other claims.

The original Complaint by Respondent attorneys was filed February 13, 1986. (The first trial ended in a mistrial). Trial began on September 18, 1990. Petitioner and the Corporations, on December 20, 1990, after a trial which took 29 days, were assessed compensatory damages of $183,474.93. In a later punitive damages proceeding, the jury on January 18, 1991 assessed punitive damages against Petitioner and the Corporations of $3 million--$2.5 million in favor of Mr. Weitzman and $500,000 in favor of Mr. Braiterman.

Various post-judgment motions and other matters followed. On May 3, 1991, the Circuit Court denied the post-judgment motions. Appeal to the Court of Special Appeals of Maryland proceeded, raising numerous issues, including the propriety of punitive damages.

On August 9, 1991, while the appeal was pending, Mr. Fraidin *filed a petition for bankruptcy and mailed a notice of this filing and stay to the Court of Special Appeals.* The Court, on August 19, 1991, stayed further proceedings against him. On September 26, 1991 a Motion for Relief from Automatic Stay to

Pursue Appeal was granted by the Bankruptcy Court. The Court of Special Appeals subsequently ordered on October 15, 1991, that the appeal and other matters shall proceed.

On September 4, 1992, the Court of Special Appeals issued its opinion in *Fraidin v. Weitzman*, 93 Md.App. 168, 611 A.2d 1046 (1992). Numerous issues were reviewed which are not part of this Petition. As to punitive damages, the Court determined due process requirements were not met in the award, *which, as the Court remarked, equalled Mr. Fraidin's net worth even by the most generous view of the evidence* ***at the time of trial***. The award thus was remanded to the Circuit Court.

The Court of Special Appeals affirmed the jury verdict as to liability and as to compensatory damages. However, it remanded the punitive damages award to the Circuit Court for Baltimore City. The Court of Special Appeals concluded the punitive damages did not conform to applicable due process standards. The remand was for a new proceeding on that issue.

The Court of Special Appeals' mandate in that earlier appeal was issued October 5, 1992. Petitioner and the Corporations submitted to the Court of Appeals of Maryland a petition for a writ of certiorari, on other issues the matter. That petition was denied on January 14, 1993.

On remand as to punitive damages, the Circuit Court (Hon. Thomas E. Noel, J.) *did not conduct a new trial*. Instead, on February 25, 1993, it conducted a hearing at which it declined to consider certain new evidence--that is, the fact that Mr. Fraidin had in the interim filed for bankruptcy, which did not exist at the time of the jury's January 18, 1991 punitive damages award.

The Circuit Court decided the punitive damages award would be reduced by half. It issued an Order remitting any punitive damages in excess of $1,250,000 for Mr. Weitzman and any punitive damages in excess of $250,000 for Mr. Braiterman.

This prompted a second appeal by Mr. Fraidin and the corporations to the Court of Special Appeals of Maryland on the propriety of the Circuit Court's actions on remand. The Court of Special Appeals on March 29, 1994 issued its opinion. (*Jacob Fraidin, et al. v. Andre Weitzman*, et al. Court of Special Appeals, No. 935, September Term, 1993 (unreported)).

The Court of Special Appeals affirmed the Circuit Court. The Court's mandate was issued April 28, 1994.

Petitioner and the Corporations then applied to the Court of Appeals of Maryland for a writ of certiorari. That petition was denied by the Court of Appeals on September 14, 1994.

## GROUNDS FOR JURISDICTION

The Court of Special Appeals issued its opinion on March 29, 1994. Petitioners timely submitted a petition for a writ of certiorari to the Court of Appeals. That petition was denied on September 14, 1994.

In accordance with Rule 13.3 of this Court, this Petition was timely filed within 90 days of the September 14, 1994 denial by the Court of Appeals of the petition to that Court for a writ of certiorari.

The jurisdiction of this Court is invoked through 28 U.S.C. Sec. 1257(a).

## STATUTES OR PROVISIONS INVOLVED

The due process clause of the Fourteenth Amendment states: "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

### *A. Statement of Material Facts*

This matter concerns an involved background and extensive procedural history. A general description will suffice to provide a context for the issues in this Petition.

#### *1. Previous Action Challenging Loan*

The scenario began with a $10,000 loan to Ray Dorman and Margarette Dorman ("the Dormans") by North American Credit Corporation. The loan was brokered by Pacific Mortgage & Investment Group, Ltd. and secured by a mortgage held by North American. Both entities are managed by Jacob Fraidin.

After the loan was paid, the Dormans decided it, and the interest charged for it, were improper. In May of 1982, they retained Sheldon H. Braiterman, P.A. ("Braiterman") and Andre R. Weitzman ("Weitzman") to take legal action on their behalf against Fraidin and the Corporations concerning the loan. At that time, Weitzman was part of Braiterman's law firm, Braiterman & Johnson, P.A.

The Dormans executed a power of attorney and contingent fee arrangement ("the Contract"). Mr. Weitzman left Braiterman & Johnson and started his own firm in April, 1985. Eventually, a new contract, dated April 10, 1985, was arranged between Weitzman and the Dormans. This essentially was the same as before, but it appointed only Weitzman as the attorney.

An action challenging the $10,000 loan was filed on behalf of the Dormans against Fraidin and the Corporations. Fraidin, Pacific, and North American Credit were represented by Melvyn Weinstock and his firm, Weinberger, Weinstock, Sagner, Stevan & Harris. On September 23, 1985, after a three-day trial, the jury returned a verdict against Fraidin and the Corporations of $66,949.86 in compensatory damages and $300,000 in punitive damages. Post-trial motions were denied on November 7, 1985.

*2. Fraidin's Settlement with Dormans*

Following this verdict, Fraidin wished to settle the matter, and was of the opinion the Dormans were open to settlement. Fraidin (without attorney Weinstock) met with Weitzman and Braiterman on November 1, 1985 as to settlement. Fraidin offered to settle the judgment for $100,000 over five years or $60,000 payable immediately. This offer was not accepted. Nor was it communicated by Weitzman to the Dormans.

On November 12, 1985, Fraidin hired Gordon, Feinblatt, Rothman, Hoffberger & Hollander for post-judgment matters and to advise him of his options in view of the judgment. Lawrence D. Coppel of that firm reviewed the case and met with Fraidin. Weinstock continued to be involved as counsel.

In mid-November, 1985, there were further contacts about settlement or other matters between either Fraidin or Weinstock and Braiterman or Weitzman. Eventually, there was direct contact between Fraidin and the Dormans. On November 25, 1985, Dorman left a message at Weinstock's office that he just wanted his money and he wanted to settle. Weinstock told Fraidin and Weitzman about this call. Fraidin requested advice on the matter and was informed by Weinstock and Coppel that he could deal directly with the Dormans.

On November 27, 1985, Fraidin contacted the Dormans to set up a meeting about settlement. The Dormans told Weitzman of this meeting, although Weitzman advised Dorman not to meet with Fraidin if Weitzman was not present.

It appeared the Dormans, dissatisfied with the treatment they had received by Weitzman, had determined to discharge him as their counsel before any meeting between them and Fraidin--although this remains disputed by Respondents. In any event, the Dormans arranged to meet Fraidin directly.

On Thanksgiving Day, 1985, Fraidin met with the

Dormans at a bar in East Baltimore. Weitzman was not present. Fraidin and the Dormans discussed settlement possibilities. On November 28, 1985, Fraidin met with Mr. Dorman and with Weitzman at a fast food restaurant. That meeting did not produce a settlement. Several days after, Fraidin met with the Dormans again at the East Baltimore bar. Weitzman, initially, was not present, but he appeared and attempted to break up the meeting.

On December 4, 1985, the Dormans sent a letter discharging Weitzman and Braiterman. On December 6, 1985, Weitzman met with Mr. Dorman and obtained a statement disclaiming that letter and confirming case had not been settled.

Nevertheless, settlement did take place between Fraidin and the Dormans directly. On December 9, 1985, the Dormans settled with Fraidin for $50,000 cash. On December 8, Fraidin had informed Weitzman that Fraidin and the Dormans were going to settle the case the next day and told Weitzman that he, Weitzman, was welcome to attend that meeting.

Attorneys for Mr. Fraidin or for the Dormans were not present at settlement. However, a notice of satisfaction of judgment was executed by the Dormans and later was filed with the court, on December 10, 1985. The Dormans reaffirmed their December 4 written discharge of Weitzman and Braiterman.

*3. Challenge to Settlement*

Upon learning of the settlement, Weitzman and Braiterman, on December 11, 1985, filed a motion to set it aside. On December 14, 1985, the Dormans wrote to Weitzman and reaffirmed their termination of his services.

A hearing on the motion to set aside the settlement was conducted on December 26, 1985 (J. William Hinkel, J.). The hearing was extensive and all counsel involved were present. Ms. Dorman testified the settlement was voluntary and that the Dormans were satisfied with it.

On January 10, 1986, Judge Hinkel denied the motion by the attorneys to set aside the order of satisfaction. There was no appeal. *This should have ended the matter.*

*4. Underlying Action by Weitzman/ Braiterman Against Fraidin, et al.*

However, on February 13, 1986, Weitzman, along with Braiterman and Johnson, P.A. initiated an action in the Circuit Court for Baltimore City against: the Dormans, Fraidin, the Corporations, Weinstock and his firm, and Coppel and his firm. The multi-count Complaint alleged: breach of contract, quantum meruit fee, fraud, conspiracy, and tortious interference with contract. It sought compensatory and punitive damages.

Trial on this Complaint did not commence until January, 1990. However, that trial ended in a mistrial.

A second trial began on September 18, 1990. This trial would take up 29 days. The eventual result of the trial was in favor of the Plaintiff attorneys. The jury verdicts were:

on Count I (breach of contract against Dormans): $25,000 (one half of the settlement figure arrived at between Fraidin and the Dormans--$12,500 to each Plaintiff), plus interest;

on Count IV (interference with contract as to Fraidin, the Corporations, and their counsel): no liability as to counsel, but damages against Fraidin and the Corporations of $183,474.93 (one half of the award in the original suit--$91,737.47 for each Plaintiff), plus interest, and

on Count V (civil conspiracy as to all defendants): liability as to the Dormans, Fraidin and Corporations, but not their counsel. However, no damages awarded.

Exemplary damages were assessed on Counts IV and V. The jury in a later proceeding on punitive damages of January 18, 1991 awarded punitive damages against Fraidin and the Corporations which totalled $3,000,000: $2,500,000 for

Weitzman, and $500,000 for Braiterman.

Post-judgment motions were denied on May 3, 1991. Fraidin and the Corporations then appealed to the Court of Special Appeals, raising various issues regarding the trial.

*5. Appeal, Remand on Punitive Damages*

The Court of Special Appeals, on appeal from this extensive trial, undertook a detailed review of numerous issues. The bulk of this discussion is not relevant to this present Petition and need not be recited here. See *Fraidin v. Weitzman*, 93 Md.App. 168, 611 A.2d 1046 (1992), *cert.den.*, 329 Md. 109, 617 A.2d 1055 (Bishop, J.).

In general, the verdict was affirmed. The sole matter remanded to the Circuit Court was the punitive damages.

On that issue, Fraidin disputed the conclusion that the evidence was sufficient to support a finding of malice by him against Weitzman and Braiterman. The basis for that conclusion (see App. 27a et seq., 93 Md.App. at 203-204) supposedly was that Fraidin induced the Dormans to discharge Weitzman and Braiterman. However, there was evidence that the Dormans already were dissatisfied with Weitzman and Braiterman before they ever met with Fraidin, and that the Dormans had discharged them before any contact or meeting with Fraidin.

Thus, Petitioners contended that at the time of the discussions between Fraidin and the Dormans to settle the judgment in the Dormans' original suit challenging their loan, there was no attorney-client relationship from which any malice could be inferred by Fraidin against Weitzman or Braiterman. Fraidin's interest was simply to see if the Dormans would settle. If they wished to do so and if Weitzman and Braiterman--no longer in an attorney-client relationship but wishing to protect their fee--attempted to prevent such a settlement, then Weitzman and Braiterman, and not Fraidin, were the tortious actors. This

dispute clearly affects the matter of Fraidin's "malice."

The Court of Special Appeals determined that sufficient "malice" in the legal sense could be found by the jury based on these circumstances. The remand as to punitive damages was in light of due process standards described by this Court in *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991). (For a further discussion in Maryland as to these standards, see *Alexander & Alexander, Inc. v. B. Dixon Evander & Associates*, 88 Md.App. 672, 596 A.2d 687 (1991), *cert.den.*, 326 Md. 435, 605 A.2d 137).

The Court of Special Appeals found that, as to these standards, any punitive damages award meeting due process requirements ***must relate to the defendant's ability to pay***. The Court stated, at App. 37a, 93 Md.App. at 211 [emphases supplied]:

> What disturbs us about the award in the case sub judice is not the particular amount of the award, but its proportion to appellant's wealth. Evidence regarding appellant's net worth was controverted. Information prepared by Fraidin, for litigation purposes, placed his personal wealth at $250,000, and the Corporations' in the red as of June, 1990. Fraidin's sworn application to the Western Surety Company, introduced by Braiterman, P.A. and Weitzman, showed Fraidin's net worth (including corporate assets) to be over $3,000,000, as of June 1985. Fraidin did not produce copies of his income tax returns for 1988, 1989, or 1990. The jury was entitled to reach its own conclusions regarding appellants' net worth; however, no estimates appear to be higher than in the area of $3,000,000. *Thus, the $3,000,000 punitive award was essentially equivalent to the maximum approximation of appellants' net worth.*

The Court of Special Appeals continued at App. 37a:

> When a punitive damage award consumes a defendant's total wealth, it has ceased to serve the societal goal of punishment. *A defendant need not be financially destroyed in order to be punished.*

Reviewing other authority on punitive damages, a defendant's financial condition, and proportionality (App. 37a-40a, 93 Md.App. at 212-215), the Court stated at App. 42a, 93 Md.App. at 216 [citations omitted, emphases supplied]:

> Therefore...we hold that although punitive damages are appropriate in the case sub judice, the jury did not properly consider appellants' wealth in making its punitive damage award. Upon its review of the amount of the award, the trial court did not 'assure that the size of the award [would] "accomplish society's goals,"' and disregarded the disastrous consequences the award would have on appellants' future existence. *Had the trial court considered appellants' net worth, it would have required a remittitur, or ordered a new trial on the amount of punitive damages. Consequently, the punitive damage award does not comport with due process because the award 'fails to serve its proper purpose' and exceeds 'an amount that will accomplish society's goals of punishment and deterrence.'*

The Court remarked that, as to its determination on the punitive damages award, it could take one of three potential actions: 1) modify the award on its own, either directly or by ordering a new punitive damages trial; 2) vacate the award and remand for reconsideration by the trial judge, or 3) vacate and direct a new trial. Taking the second option, this Court concluded at App. 43a, 93 Md.App. at 217:

> Because the trial court did not consider appellants' net worth during its review of the jury's punitive damages award, we shall vacate the award and

> remand the case to the trial court for its reconsideration of granting a remittitur, or if rejected, a new trial.

In the event of a new trial on punitive damages, the Court added, along with instructions in the original trial, the Circuit Court [see App. 44a, 93 Md.App. at 218, emphasis retained]:

> shall... include an instruction by which the jury is advised that the amount of the punitive damage award should represent an appropriate punishment to appellants taking into account, as a limiting factor, evidence of their financial status. To this end, the jury may only *punish* appellants for their conduct, *not destroy or bankrupt them.*

With this directive, the punitive damages matter was remanded. The Court then discussed various issues not involved in this present appeal (see 93 Md.App. 218-239).

*6. Punitive Damages Proceeding on Remand*

At the February 25, 1993 hearing on punitive damages, Fraidin maintained that, consistent with the Court of Special Appeals directive in its remand on the issue, *a new trial* on punitive damages was appropriate. And any new trial *or* any other remand proceeding on the issue must consider *any additional evidence concerning the defendant's financial status* in order to determine any appropriate punitive damages award.

Weitzman and Braiterman contended no new evidence could be introduced because the proceedings were in the nature of a motion for remittitur. Petitioner and the Corporations had submitted a request for remittitur along with other post-trial request for relief (new trial, etc.) after the jury verdict in the original trial. But no such motion was pending at the time of the February 25, 1993 proceeding.

At the February 25 remand proceeding, Fraidin reminded

the Court that his bankruptcy was still active. He stated the Bankruptcy Examiner was in Court and was prepared to testify as to Fraidin's financial condition, with documentation.

After further argument by the parties, the Court remarked (App. 82a-84a):

> Mr. Fraidin had made a comment with respect to alleging that the Plaintiffs in this case are not interested in what the independent bankruptcy investigator would have to say, because it would be supportive of his position. I don't know that that's necessarily accurate, because Mr. Fraidin, I believe that there is a body of law that does govern situations such as this.
>
> We had a very lengthy, involved trial in this case, and I don't think it proper to go beyond the evidence that was adduced at that trial.
>
> * * *
>
> I would be most interested in hearing what the investigator would testify to, but I don't feel it is proper.
>
> Any conduct of yours, Mr. Fraidin, with respect to Mr. Weitzman and Mr. Braiterman in this case as to the issue of malice has already been resolved. The jury made a finding, the Court of Special Appeals has affirmed it.
>
> The jury also heard conflicting controverted evidence regarding your net worth.
>
> The jury seemed to feel that there was -- that you were worth substantially more than the evidence you produced.

> It is --when I calculated the compensatory award, I believe it came out to the penny of what the attorney fee would have been in the underlying case, and I think the three million dollar figure was probably a same or similar calculation by the jury that came to the amount of your testified to worth or one bit of evidence that did, in fact, come in.
>
> So I am not -- I am of the opinion, and I do find that in a remittitur hearing I am bound by what occurred at trial, and I am not permitted to go beyond that, so that is what I will limit my finding to, the evidence that was adduced during the very lengthy and interesting trial that we had here... .
>
> Now, the question is, how do we proceed.
>
> * * *
>
> Now, during the trial, as the court has pointed out, the evidence concerning your net worth went across the spectrum. As a matter of fact, the testimony was that the corporations were operating in the red.
>
> Now, I am willing to listen to arguments based on the evidence that was, in fact, adduced at trial, or I can make my ruling having sat through almost two trials involving this set of circumstances. ...

The parties then offered additional argument. Mr. Fraidin, for his part, stated evidence that was submitted at the trial and which purported to show his net worth was $3,000,000 was not introduced by him and was "vehemently objected to."

He stated, "There is no evidence in this case that shows that Fraidin's net worth in 1990, 1991, or 1992 is anywhere near what the plaintiffs would have this Court believe, and they have had two years in which to substantiate it to this Court." He

remarked, "I am here cut open. I have been dissected, I have been in bankruptcy for two years." (App. 87a).

The Court then ruled, at App. 90a:

> Mr. Fraidin makes a very legitimate point when he raises the issue of at what point in time should a defendant's net worth be determined for purposes of assessing punitive damages.
>
> * * *
>
> Unfortunately, as the Court of Special Appeals pointed out, I didn't give the jury complete instructions, but bear in mind, this is somewhat of a novel question in Maryland, and according to Judge Bishop, as I understand, this may have been the first case to really address directly the due process issue in Maryland.
>
> So as to whether or not we must affix a point in time to then determine what Mr. Fraidin's net worth would be, we do not have absolute direction, but it is a matter of legitimate concern, but the evidence in the trial ran the gamut concerning Mr. Fraidin's net worth in terms of the amount and time. We heard evidence ranging from 1981 through several years.
>
> * * *
>
> So the jury made the best decision they could from all of the evidence, but I point out when it was convenient for Mr. Fraidin to have a low net worth he could produce documentation to that effect, and when it was convenient for Mr. Fraidin to have a substantial net worth, he could produce documentation to that effect. So I imagine the jury had a rather difficult decision to make.

> I differ from [Plaintiffs's suggestion] that the degree of malice should be considered as a factor in determining the amount in order to be remitted.
>
> * * *
>
> What I am going to do is require the Plaintiffs to remit one half of the punitive damages with respect to Mr. Weitzman and one half of the punitive damages with respect to Mr. Braiterman, Sheldon Braiterman, P.A.

The Circuit Court thus determined the punitive damages against the Petitioners/Defendants (Jacob Fraidin, Pacific Mortgage and Investment Group, Ltd. and North American Credit Corporation) would be assessed at $1,500,000 on behalf of Plaintiff/Respondent Weitzman and $250,000 on behalf of Plaintiff/Respondent Braiterman. An Order to that effect was issued on February 25, 1993.

*B. Decision by the Court of Special Appeals*

The Court of Special Appeals, on Petitioners' appeal from the remand proceeding on punitive damages, affirmed the Circuit Court. (*Fraidin v. Weitzman*, Court of Special Appeals, No. 935, March 29, 1994, September Term, 1993 (unreported) ["*Fraidin II*"].

The Court stated (App. 6a):

> In our view, Fraidin misunderstood our mandate in *Fraidin I*. As Fraidin apparently saw it, our mandate required the trial court to base its remittitur upon evidence of Fraidin's current net worth. We point out to Fraidin that if that was what we had intended, our mandate would have said so. The jury's award of punitive damages was based upon evidence considered by the jury at trial.

The Court of Special Appeals continued:

> Thus, it would have been inappropriate for the trial court to have granted its remittitur based upon evidence other than that considered by the jury. In short, the trial court complied with our mandate. There was no error.

As to the excessiveness of a punitive damages award of $1.5 million against an individual for a tortious interference claim, where the second-highest punitive damages award to date was against a major corporation for environmental pollution, the Court of Special Appeals stated (App. 8a) [emphasis supplied, citation omitted]:

> [W]e shall not entertain Fraidin's argument that the award was excessive because it is not proportionate to his reprehensible conduct. We made it clear in *Fraidin I* that, although the award was quite high, it violated due process only because it consumed Fraidin's entire net worth.
>
> Thus, we are here concerned only with whether the reduced award of $1.5 million is excessive in proportion to Fraidin's net worth. We have recognized that 'the granting or refusal of a remittitur is largely within the discretion of the trial judge.' In *Fraidin I*, we reviewed the trial court's denial of Fraidin's motion for remittitur and concluded that the trial court had erred in not instructing the jury to consider an award of punitive damages only in proportion to the evidence before it of Fraidin's net worth. On remand, we expressly directed the trial court to reconsider Fraidin's motion for remittitur on this basis.

The Court of Special Appeals continued (see App. 8a):

> We know of no formula or standard for equating an award of punitive damages in proportion to a defendant's net worth. In remanding *Fraidin I*, however,

> we made it clear to the trial court that an award of punitive damages that placed Fraidin in bankruptcy does not accomplish the goal of punishing and deterring wrongdoers.

The Court of Special Appeals continued (App. 8a-9a [emphasis supplied]):

> Although we have found no Maryland case saying so, *we think it only logical that the amount in remittitur should be evaluated using an abuse of discretion standard.* The trial court here remitted one half of the jury's award of $3 million. Although the award of punitive damages remains substantial, we emphasize, as we did in *Fraidin I*, that there was evidence before the jury that Fraidin's net worth varied from $225,000 to in excess of $3 million. Accordingly, the trial court did not abuse its discretion in reducing the award of punitive damages to $1.5 million.

The Court of Special Appeals thus affirmed the Circuit Court's remittitur proceeding on remand, assessing punitive damages against Petitioners of $1.5 million.

Petitioners, aggrieved by this decision and contending that due process still had not been afforded them regarding the punitive damages issues in this matter, applied to the Court of Appeals for a writ of certiorari. This petition was denied on September 14, 1994.

## REASONS FOR GRANTING WRIT

The Court of Special Appeals side-stepped crucial and far-reaching questions regarding the due process importance of assessing punitive damages by considering *current* evidence of a defendant's *present* net worth. It affirmed a punitive damage award in a contract matter, not involving personal injuries, but which damages are nearly $600,000 greater than punitive

damages assessed against a major corporation for environmental pollution.[1]

## I. PUNITIVE DAMAGES REQUIREMENTS, AS WELL AS THE REMAND DIRECTIVE MANDATED THAT A NEW PUNITIVE DAMAGES PROCEEDING SHOULD HAVE BEEN CONDUCTED, IN THE NATURE OF A NEW TRIAL ON PUNITIVE DAMAGES

The Court of Special Appeals gave short shrift to the pivotal issue of the trial court's failure to act consistent with the appellate directive which indicated the necessity of a *new trial* on punitive damages. And the Court of Special Appeals in *Fraidin I* ignored the fact that at the woefully inadequate remand proceeding, the trial court, without adequate explanation or basis, simply reduced by half the jury's $3 million punitive damages award--an award which in itself had no proper relationship to Petitioners' conduct or to any credible evidence of Petitioners' net worth (either before the jury at trial or at the remand proceeding).

The Court of Special Appeals failed to acknowledge that by the language of its own remand directive, the Circuit Court improperly restricted the remand proceeding by considering it merely a hearing on a remittitur. Again, there was no remittitur motion before the Circuit Court. Petitioners may have filed such a motion after the trial, but filed no such motion on remand.

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[1] See $910,000 punitive damage award assessed against Exxon in *Exxon Corp. v. Yarema*, 69 Md.App. 124, 516 A.2d 990 (1986). The Court of Special Appeals remarked in *Fraidin I* that this was the second-highest punitive damages award allowed to stand by Maryland courts. See *Fraidin I*, 93 Md.App. at 211, citing *Alexander v. Evander*, 88 Md.App. 672, 596 A.2d 687 (1991), *cert.den.* 326 Md. 435, at 88 Md.App. at 720.

The Court of Special Appeals in *Fraidin II* stated its remand directive asked the Circuit Court "to reconsider granting Fraidin's motion for remittitur, or if rejected, a new trial." Thus, according to the Court of Special Appeals, "there was no need for Fraidin to refile the motion for remittitur." (App. 6a, fn. 3). Thus, the Court of Special Appeals was of the opinion that the motion supposedly was still at issue.

Such a conclusion is difficult to reconcile with the circumstances. The appeal concluded all prior trial matters. It would be highly irregular for an appellate court to "direct" a trial court to "reconsider" a motion not before that court.

The Court of Special Appeals' remand directive gave the Circuit Court considerable discretion as to punitive damages. That Court made it clear that it particularly was concerned with the importance of a punitive damage award bearing some relation to Petitioners' financial condition.

In the original appeal, the Court of Special Appeals plainly stated at 93 Md.App. at 216 (App. 42a) [citations omitted, emphases supplied]:

> Upon its review of the amount of the award, the trial court did not 'assure that the size of the award [would] "accomplish society's goals,"'and disregarded the disastrous consequences the award would have on appellants' future existence. *Had the trial court considered appellants' net worth, it would have required a remittitur, or ordered a new trial on the amount of punitive damages.* Consequently, the punitive damage award does not comport with due process because the award 'fails to serve its proper purpose' and exceeds 'an amount that will accomplish society's goals of punishment and deterrence.'

The Court also stated (93 Md.App. at 217) (App. 43a) that, upon remand, the trial court was to "consider appellants' net worth"

and that the court should "reconsider" granting a new trial. Although this statement did not expressly *require* a new trial, it noted additional jury instructions if such a trial occurred.

Thus, the Circuit Court *had the discretion to order a new trial on punitive damages*. Even if no new trial were ordered, the remand clearly required *a new evidentiary proceeding*. The Circuit Court need not view the remand as merely another hearing on any previous remittitur motion.

## II. THE CIRCUIT COURT DID NOT COMPLY WITH DUE PROCESS STANDARDS CONCERNING PUNITIVE DAMAGES IN ITS REMAND HEARING

This Court set new guidelines based on due process for punitive damages awards in *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991).

The *Haslip* Court commented that punitive damages "have long been a part of traditional state tort law" 499 U.S. 15, citing *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984) (and see discussion at 113 L.Ed.2d at 18-20). Yet "unlimited jury discretion--or unlimited judicial discretion for that matter--in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities." 499 U.S. 18. This Court reviewed various characteristics of a "sufficiently definite and meaningful constraint" on discretion permitted by traditional means of assessing punitive damages.

While *Haslip* declined to draw a "mathematically bright line" as a measure of all punitive damage awards, it stated 499 US. at 21-22 that a due process consideration of the propriety of a punitive damages award would involve:

--whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the

defendant's conduct as well as the harm which occurred,

--the degree of reprehensibility of the conduct,

--the existence or frequency of similar past conduct, the defendant's awareness of past conduct, and any concealment of such past conduct,

*--the profitability to the defendant of the conduct,*

--the desirability *of removing that profit* and of having the defendant sustain a loss,

*--the defendant's financial position,*

--all the costs of litigation,

--any criminal sanctions against the defendant, and

--the existence of other civil awards against the defendant for the same conduct (taken in mitigation).

In *TXO Production Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993), a majority of this Court upheld, against a due process challenge, a $10 million award of punitive damages where actual damages were a mere $19,000. Justice Stevens, in his plurality opinion, joined by Chief Justice Rehnquist, Justice Blackmun, and in part by Justice Kennedy, was unwilling to prescribe a "test" for assessing the constitutionality of such damages awards. *Id.* at 2720. Justice Stevens wrote:

> The punitive damages award in this case is certainly large, but in light of the amount of money potentially at stake, the bad faith of the petitioner, and the fact that the scheme employed in this case was part of a larger pattern of fraud, trickery, and deceit, *and petitioner's wealth*, we are not persuaded that the award was so 'grossly excessive' as to be beyond the power of the State to allow.

*Id.* at 2722-2723 [emphasis supplied]. Justice Stevens added that evidence of the defendant's "impressive net worth" is among the factors that "are typically considered in assessing punitive

damages" and was included in the factors approved in *Haslip*. *Id.* at 2722 n. 28. He reiterated that in *Haslip* "we referred to the 'financial position' of the defendant as one factor that could be taken into account in assessing punitive damages," and noted that "many States permit the jury to take account of defendant's wealth." *Id.* at 2723. He cited four state cases in support of this last point. *Id.* at 2723 n. 31.

Justice Kennedy, concurring, spoke with approval of the fact that "respondent's attorneys informed the jury of TXO's vast financial resources and argued that TXO would suffer only as a result of a large judgment." *Id.* at 2726.

Due process standards for punitive damages in Maryland (following *Haslip*) were reviewed by the Court of Special Appeals of Maryland, in a decision previous to *Fraidin I*, *Alexander & Alexander, Inc. v. B. Dixon Evander & Associates*, 88 Md.App. 672, 596 A.2d 687 (1991), *cert.den.*, 326 Md. 435, 605 A.2d 137. The Court of Special Appeals reviewed punitive damages awards and the *Haslip* due process factors (88 Md.App. at 704- 712).

*Alexander* stated (88 Md.App. at 714-718), for example, that punitive damages are only to be imposed for "outrageous conduct." The Court further stated (88 Md.App. at 719), as to appellate review of a punitive damages award:

> If faced with a punitive award that was entered upon proper procedure but which nonetheless contravenes due process because it is out of all proportion to both the harm caused and the perniciousness of the conduct, we could not, on the ground of judicial impotence, allow the unconstitutional award to stand.

Remanding a $12.5 million punitive award (which in itself had been greatly reduced by the trial court) in the case before it, the *Alexander* court made reference to the fact that the plaintiff

"failed to present evidence of [the defendant's] net worth and ability to pay." (88 Md.App. at 719).

Moreover, the *Alexander* court, in remanding the punitive damages issue, determined that "[i]t is for the jury to determine the amount of damages" while "the role of the judge is merely to assure that [the jury] is has exceeded the instructions given it or the supervening legal constraints placed on its discretion."

The Court of Special Appeals, in *Fraidin I*, stated it was remanding the punitive damages award *due to* the importance of properly considering a defendant's financial condition. Thus, *additional* evidence of financial condition would be appropriate on remand. Certainly this necessary if the trial evidence as to net worth was wide ranging and disputed.

Yet the Circuit Court at the remand proceeding refused to permit any additional evidence on Petitioners' financial condition, even though it indicated that it was interested in hearing such evidence. The Circuit Court did so even though it also indicated that it needed additional guidance in this area.

This approach by the trial court on remand clearly was contrary to its remand responsibility to assure the entry of a proper punitive damages award complying with due process requirements. It should not be sanctioned.

Maryland and other courts have long recognized the importance of a defendant's financial status in determining punitive damages. See generally, *Sloan v. Edwards*, 61 Md. 89 (1883); *Schloss v. Silverman*, 172 Md. 632, 192 A. 343 (1937); *Carl M. Freeman Associates, Inc. v. Murray*, 18 Md.App. 419, 306 A.2d 548 (1973); *Derby v. Jenkins*, 32 Md.App. 386, 363 A.2d 967 (1976) (as to "financial ability of the defendant to withstand a verdict of punitive damages"), and *Hamilton v. Ford Motor Credit Co.*, 66 Md.App. 46, 502 A.2d 1057 (1986), *cert.den.*, 306 Md. 118, 507 A.2d 631 (stating "pecuniary

circumstances of the defendant are proper to be considered").

Therefore, at any trial or hearing to assess punitive damages, the financial condition of a defendant *at the time the damages are to be assessed is pivotal.* It follows that, upon any retrial on punitive damages--or at *any* later proceeding on such damages such as on remand of the issue following appeal--any relevant *changes* in financial condition occurring since the time of the original trial would be relevant and admissible.

This is consistent with the primary purpose of punitive damages: to deter conduct and not as retribution. As a comment to Restatement (Second) of Torts Sec. 908(2) indicates, regarding considerations in assessing punitive damages:

> The wealth of the defendant is also relevant, since the purposes of exemplary damages are to punish for a past event and to prevent future offenses, and the degree of punishment or deterrence resulting from a judgment is to some extent in proportion to the means of the guilty person.

In *Adams v. Murakami*, 54 Cal.3d 105, 284 Cal.Rptr. 318, 813 P.2d 1348 (1991) (en banc) (noted by the Court of Special Appeals in *Fraidin I*) involving a medical malpractice action, the court stated in its review of punitive damages that "the most important question" for a punitive damages award is whether the damages "will have deterrent effect--without being excessive." That is, *even if a punitive damage award bears a rational relationship to the conduct* the award still can be so disproportionate to a defendant's ability to pay that it would be excessive *for that reason alone.*

The *Adams* court remarked that "the principle that a punitive damage award must be considered in light of the defendant' financial condition is ancient." The court noted the Magna Carta (1215) prohibited certain civil sanctions

disproportionate to the offense or depriving the wrongdoer with the means of livelihood. The court added, "Absent evidence of a defendant's financial condition, a punitive damages award can financially annihilate him. We see no reason why a modern-day civil defendant should be entitled to less consideration than one was given 800 years ago."

In *Acosta v. Honda Motor Co., Ltd.*, 717 F.2d 828 (3d Cir. 1983), the court, applying Virgin Islands law, stated that the wealth of the defendant "should be taken into account in assessing" punitive damages. In *Gamble v. Stevenson*, 406 S.E.2d 350 (S.C. 1991), reviewing applicable standards for due process, the court stated that "Hereafter, to ensure a punitive damage award is proper, the trial court shall conduct a post-trial review and may consider," among other factors, the "defendant's ability to pay".

In *Welty v. Heggy*, 145 Wisc.2d 828, 429 N.W.2d 546 (1992) the court noted that the "net worth" of a defendant for punitive damages purposes *is generally such net worth as of the trial date*. The *Welty* court reviewed a punitive damages proceeding after remand on that issue. The court noted the original trial was in 1983, the retrial on remand was in 1986, and "the trial court determined [defendant's] net worth *as of that date*." [Emphasis supplied]. As such, the court approved the exclusion, in the proceedings on remand on punitive damages, of the value of a residence "which the defendant no longer owned as of the retrial date."

And in *Wilson v. Dukona Corporation*, 547 So.2d 70 (Ala. 1989), the court approved of a remittitur of punitive damages based on evidence at a post-judgment motion hearing that the punitive damages award was excessive in view of the defendants' financial condition *at the time of that hearing*. The court stated, "by clearly showing at the post-judgment hearing

that the punitive damages awarded were excessive, [the defendants] overcame the presumption of correctness that attached to the jury's verdict."

See also, Devane, M.A., "The Use of Evidence of Wealth in Assessing Punitive Damages in New York: *Rupert v. Sellers*,[2]" 44 Albany L.Rev. 422 (1980), discussing punitive damages and recommending the two-phase approach stated in the *Rupert* case. In that approach, evidence of a defendant's wealth is not admitted unless the jury returns a special verdict stating the plaintiff is entitled to punitive damages. Then, only a statement of the defendant's total net worth is sufficient. Full financial disclosure is not required and *discovery as to defendant's net worth is not permitted until after the return of the special verdict.* (44 Albany L.Rev. at 437).

See also, Annotation, 79 A.L.R.3d 1138, "Admissibility on Defendant's Behalf, As Matter in Mitigation of Punitive Damages, of Evidence as to His Lack of Financial Resources" and Annotation, 87 A.L.R.4th 141, "Punitive Damages: Relationship to Defendant's Wealth as Factor in Determining Propriety of Award." As noted in 87 A.L.R.4th 141, at 159:

> Evidence introduced to establish the wealth of a defendant in a punitive damages case may include not only the defendant's net worth, but also its net before-tax income for the year, or both the year and the year after the incident giving rise to the litigation occurred.

Without question, evidence of a defendant's financial condition as to an award of punitive damages must be concerned with that condition *as of the time* of assessing such damages. Such an approach is not only advisable but is also crucial to a

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[2] 48 App.Div.2d 265, 368 N.Y.S.2d 904 (1975).

punitive damage award that would withstand due process review.

Accordingly, in any later punitive damages proceeding, or any retrial of the punitive damages issue, or any new proceeding on remand following appeal, *any change of circumstances* concerning a defendant's net worth must be considered. Whether the defendant, in the interim, had entered bankruptcy or had won the lottery is extremely relevant.

Therefore, even if the Circuit Court was not required to retry the punitive damage issue--although such a retrial was indicated by the remand directive--the Court was *obligated* at any proceeding on the issue to receive evidence of Petitioner's *current* financial condition, including *changes* in that condition since trial--especially if these changes concerned impecunity. Refusal to consider such evidence--especially when the Court itself indicated it would have preferred to have done so--makes no sense.

The Court of Special Appeals merely concluded, without discussion of the authorities noted here that "it would have been inappropriate for the trial court to have granted its remittitur based upon evidence other than that considered by the jury." There is no merit in, or basis for, such an unsupported conclusion.

By all the authorities indicated, and by the standards of due process, it was inappropriate for the Circuit Court *not* to have done so. The Court of Special Appeals in the face of crucial due process standards as well as of that Court's own remarks that punitive damages are not to place a defendant in bankruptcy, it approved a $1.5 million punitive damages award against a defendant *who was already in bankruptcy*.

Indeed, if Mr. Fraidin had won the lottery the day before the February 25, 1993 remand proceeding, no doubt Respondents would have *insisted* that the Circuit Court receive evidence as to

*that* circumstance. Thus, Respondents' protestations to the Circuit Court and on appeal that Fraidin's bankruptcy was not relevant do not by themselves dispose of the issue.

Due process surely is implicated when a trial court either sets or validates a punitive damages award while at the same time refusing to consider evidence of the defendant's *current* net worth. This is an issue of continuing significance to punitive damage awards, whether as to later trial-level punitive damages proceedings following a verdict on liability, on a later proceeding following a post-judgment motion, or on remand.

III. PUNITIVE DAMAGES WERE EXCESSIVE

Finally, the $1.5 million punitive damages award itself violated due process standards. Punitive damages are an "extraordinary sanction" to be awarded in egregious cases. They may be imposed only where there is "outrageous conduct." Their purpose is not to reward the plaintiff. Here, the supposed "reprehensible" conduct was attempts by Fraidin to settle a lawsuit without participation of attorneys for the plaintiffs, in which there was a genuine dispute over whether the attorneys already had been discharged. The evidence at trial showed that the Dormans, more than once, reaffirmed their discharge of Weitzman and Braiterman. In the hearing to set aside the settlement, Ms. Dorman testified they were not coerced into it by Fraidin. The settlement was confirmed by that court

The supposed "outrageous" and "egregious" conduct, or its "degree of reprehensibility" must be viewed in this context.

There was no evidence of any past conduct by Fraidin of this sort or of the likelihood of any future such conduct. Further, this act did not result in severe personal injury, death, harm to reputation, or permanent environmental pollution.

The Circuit Court's review of the punitive damages award on remand did not properly consider these factors. The

Court did not even review whether there was sufficient evidence to support the punitive damages award. Such an award was a manifest injustice, which the Circuit Court had a duty to prevent, even after affirmance of the underlying verdict on appeal.

Refusal by the Circuit Court to order a retrial of punitive damages, to admit additional evidence, to examine the background, or to support its decision as to a $1.5 million award, violated due process. Further, the trial court merely reduced the total award by half without any explanation for its action.

This Court, in its prior examination of punitive damages awards and due process, has not reviewed the necessity of consideration by a trial court of changes in the financial condition of a defendant between the time of the original award and the time of any remand proceeding or new proceeding. These are persistent issues in such cases, and the application of due process concerns to these circumstances are deserving of review. Thus, the due process issues regarding punitive damages which prompted the remand in this case, and the treatment of those issues in the remand proceeding, are worthy of the attention of this Court.

## CONCLUSION

THEREFORE, Petitioner Jacob Fraidin requests of this Court that it GRANT his Petition for a Writ of Certiorari and that it REVERSE the decision of the Court of Special Appeals of Maryland.

RESPECTFULLY SUBMITTED,

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(410) 484-2520
Pro Se

No. 94-_____

**IN THE SUPREME COURT OF THE UNITED STATES**
October Term, 1994

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JACOB FRAIDIN

*Petitioners,*

v.

ANDRE R. WEITZMAN, et al.,

*Respondents*

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**PETITION FOR A WRIT OF CERTIORARI**
**TO THE**
**COURT OF SPECIAL APPEALS**
**OF MARYLAND**

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**APPENDIX TO PETITION**

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 935

September Term, 1993

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JACOB FRAIDIN, et al.

V.

ANDRE WEITZMAN, et al.,

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Moylan,
Alpert,
Wenner,

JJ.

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Per Curiam

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Filed: March 29, 1994

In *Fraidin v. Weitzman*, 93 Md. App. 168, 611 A.2d 1046, *cert. denied*, 329 Md. 109 (1992) (*Fraidin I*), we vacated a $3 million award of punitive damages entered by a jury in the Circuit Court for Baltimore City in favor of appellees, Andre Weitzman (Weitzman) and Sheldon Braiterman (Braiterman), and against appellants, Jacob Fraidin and two corporations managed by him, Pacific Mortgage and Investment Group. Ltd. and North American Credit Corporation (hereinafter Fraidin). We remanded *Fraidin I* to the circuit court "for its reconsideration of granting a remittitur, or if rejected, a new trial." *Id.* at 27, Pursuant to our mandate, after holding a hearing, the trial court reduced the jury's award of punitive damages to $1.5 million and Weitzman and Braiterman accepted the remittitur. Undaunted, Fraidin noted this appeal. On appeal, we are asked:

1. Did the Circuit Court's punitive damages hearing and order comply with this Court's remand directive?[1]

2. Did the punitive damages figure as entered by the Circuit Court comply with due process requirements and other punitive damages standards, particularly in view of the alleged conduct supposedly supporting such damages?

3. Did the Circuit Court have authority to conduct the punitive damages proceeding upon remand?

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[1] This issue appears as issue three in appellant's brief. The first two issues addressed in appellant's brief are merely arguments in support of this issue. Nevertheless, we shall address these arguments in our discussion.

Finding no error, we shall affirm the judgment of the circuit court.

BACKGROUND

*Fraidin I* contains a thorough review of the facts giving rise to this dispute. *See* 93 Md. App. at 176-186. As this is an appeal from the remittitur of punitive damages on remand, we shall provide but a brief factual overview.

In May of 1982, Ray and Margarette Dorman (the Dormans) hired Weitzman and Braiterman, of the firm of Braiterman and Johnson, P.A., to represent them in a dispute with Fraidin. The parties entered into an agreement whereby Weitzman and Braiterman would receive a contingency fee. When Weitzman departed Braiterman and Johnson in April, 1985 and began his own firm, the Dormans accompanied him. The Dormans and Weitzman then entered into a new fee agreement. After a trial in the Circuit Court for Baltimore County, the jury awarded the Dormans substantial compensatory and punitive damages.

After judgment was entered, Weitzman took steps on-behalf of the Dormans to collect the judgment entered in their favor. Settlement discussions developed in November, 1985. Fraidin met with the Dormans on several occasions, without Weitzman being present. After several of these meetings, the Dormans discharged Weitzman and settled with Fraidin for $50,000.

After a motion to set aside the order of satisfaction was denied, Weitzman filed a complaint against Fraidin and the Dormans alleging that, among other things, Fraidin had tortiously interfered with the fee agreement between Weitzman and the Dormans.

We remanded *Fraidin I* because the jury's award of punitive damages was not in proportion to Fraidin's net worth. We said:

> We are not satisfied...that the trial court adequately considered whether the amount of the jury's award offended notions of due process.
>
> In *Alexander [v. Evander*, 88 Md. App. 672, 596 A.2d 687, *cert. den.*, 326 Md. 435 (1991)], we stated, among the principles articulated by the Court of Appeals in various cases, punitive damages "must relate to the degree of culpability exhibited by a particular defendant and *that party's ability to pay*." 88 Md. App. at 716. . . (emphasis added).
>
> . . .
>
> What disturbs us about the award in the case *sub judice* is not the particular amount of the award, but its proportion to appellant's wealth. Evidence regarding appellant's net worth was controverted. Information prepared by Fraidin, for litigation purposes placed his personal wealth at $250,000, and the Corporations' in the red as of June 1990. Fraidin's sworn application to the Western Surety Company, introduced by Braiterman, P.A. and Weitzman, showed Fraidin's net worth (including corporate assets) to be over $3,000,000 as of June 1985. Fraidin did not produce copies of his income tax returns for 1988, 1989, or 1990. The jury was entitled to reach its own conclusions regarding appellants net worth; however, no estimates appear to be higher than in the area of $3,000,000. Thus, the $3,000,000 punitive award was essentially equivalent to the maximum approximation of appellant's net worth. When a punitive damages award consumes a defendant's total wealth, it has ceased to serve the societal goal of

> punishment. A defendant need not be financially destroyed in order to be punished.

*Id.* at 211-212.

In remanding *Fraidin I*, we explained that "[b]ecause the trial court did not consider [Fraidin's] net worth during its review of the jury's punitive damages award, we shall vacate the award and remand the case to the trial court for its reconsideration of granting a remittitur, or if rejected, a new trial." *Id.* at 217.

## APPELLEES' MOTION TO DISMISS

Although it appears that Fraidin has failed to comply with several appellate rules of procedure, we emphasize that "dismissal of an appeal for non-conformity with these rules is... discretionary." *In re Joshua W.*, 94 Md. App. 486, 491, 617 A.2d 1154 (1993). Md. Rule 8-501(1) (1992); Md. Rule 8-503(g) (1992). Accordingly, we decline to exercise our discretion and deny appellees' motion to dismiss.

## I.

Fraidin first contends that on remand the trial court did not comport with our instructions. Specifically, Fraidin asserts that our mandate required the trial court, on remand, to consider additional evidence of his current net worth.[2] We see it differently.

In remanding *Fraidin I*, we explicitly directed the trial court to reconsider the motion for remittitur, or if a remittitur was rejected, order a new trial on damages. *Id.* In granting a remittitur that was accepted by Weitzman, the trial court

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[2] Fraidin filed for bankruptcy in August, 1991, after the court had entered judgment against him for $3 million. A stay was subsequently ordered, but was lifted so that these proceedings could continue.

complied with our directions.[3]

It is well established that "[a] trial judge, upon finding a verdict excessive, may order a now trial unless the plaintiff will agree to accept a lesser sum fixed by the court." *Banegura v. Taylor*, 312 Md. 609, 624, 541 A.2d 969 (1988). In considering a remittitur, the trial court need consider only the evidence considered by the jury. The Court of Appeals has made it clear that the practice of remittitur is a matter of law for the court:

> Indeed, it may be said that the practice is as much an incident and corrective of jury trial as the right of a trial court to set aside a verdict on the ground that it is against the evidence, or against the weight of the evidence. (Citation omitted.)

*Turner v. Wash. Sanitary Commission*, 221 Md. 494, 503, 158 A.2d 125 (1960). In our view, Fraidin misunderstood our mandate in *Fraidin I*. As Fraidin apparently sees it, our mandate required the trial court to base its remittitur upon evidence of Fraidin's current net worth. We point out to Fraidin that if that was what we had intended, our mandate would have said so. The jury's award of punitive damages was based upon evidence considered by the jury at trial. Thus, it would have been inappropriate for the trial court to have granted its remittitur based upon evidence other than that considered by the jury. In short, the trial court complied with our mandate. There was no error.

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[3] Fraidin contends that at the proceedings on remand a motion for remittitur was not before the trial court. This is simply not so. As we have noted, in remanding *Fraidin I*, we, directed the trial court to reconsider granting Fraidin's motion for remittitur, or if rejected, a new trial. *Supra*. Thus, there was no need for Fraidin to refile the motion for remittitur.

II.

Fraidin also contends that the trial court's remittitur of one-half of the jury's award of punitive damages is excessive, and deprived him of due process. We do not agree.

In *Fraidin I*, we reviewed the factors to be considered by trial courts in evaluating whether an award of punitive damages violates due process. *Id.* at 205-206 (citing *Pacific Mutual Life Ins. Co. v. Haslip*, --- U.S. --- 111 S.Ct. 1032, 113 L.Ed. 2d 1 (1991); *Alexander v. Evander*, *supra*). After reviewing the jury's award of punitive damages, we determined that the record contained sufficient evidence of actual malice to support the jury's award of punitive damages. *Id.* at 204-205. Nevertheless, we concluded that the award of punitive damages deprived Fraidin of the process he was due because it equalled the most optimistic estimate of Fraidin's net worth. *Id.* at 211.

Fraidin now asserts that the trial court's remittitur of $1.5 million is not proportionate to the degree of his culpability, and points out that most punitive damages awards are far less than this one. In *Fraidin I*, *supra*, 93 Md. App. at 211, we reviewed several cases in which large awards of punitive damages had been upheld by Maryland appellate courts:

> [In *Alexander*,] [we] noted that the largest award, of which we are aware, rendered by a Maryland court was $7,500,000 in *Potomac Electric v. Smith*, 79 Md. App. 591, 558 A.2d 768 (1989) (Utility company permitted a high voltage wire to remain downed in an area frequented by children which subsequently caused the electrocution of a child.). The next highest award allowed to stand was $910,000 against Exxon corporation in *Exxon Corp. v. Yamera*, 69 Md. App. 124, 516 A.2d 1990 (1986) (Action against corporation whose storage tanks leaked gasoline that interfered with landowners' property rights.) We also commented that other than these awards, most have been well under $100,000.

*Fraidin I*, *supra*, 93 Md. App. at 211 (citing *Alexander*, *supra*, 8 82 Md. App. at 720).

Following this review, we said "[w]hat disturbs us in the case sub judice is not the particular amount of the award, but its proportion to appellant's wealth." *Id.* In other words, we shall not entertain Fraidin's argument that the award was excessive because it is not proportionate to his reprehensible conduct. We made it clear in *Fraidin I* that, although the award was quite high, it violated due process only because it consumed Fraidin's entire net worth.

Thus, we are here concerned only with whether the reduced award of $1.5 million is excessive in proportion to Fraidin's net worth. We have recognized that "the granting or refusal of a remittitur is largely within the discretion of the trial judge." *Alexander*, *supra*, 88 Md. App. at 717. In *Fraidin I*, we reviewed the trial court's denial of Fraidin's motion for remittitur and concluded that the trial court had erred in not instructing the jury to consider an award of punitive damages only in proportion to the evidence before it of Fraidin's net worth. On remand, we expressly directed the trial court to reconsider Fraidin's motion for remittitur on this basis. We know of no formula or standard for equating an award of punitive damages in proportion to a defendant's not worth. In remanding, however, we made it clear to the trial court that an award of punitive damages that placed Fraidin in bankruptcy does not accomplish the goal of punishing and deterring wrongdoers. *Fraidin I*, *supra*, 93 Md. App. at 216.

Although we have found no Maryland case saying so, we think it only logical that the amount of remittitur should be evaluated using an abuse of discretion standard. The trial court here remitted one half of the jury's award of $3 million. Although the award of punitive damages remains substantial, we

emphasize, as we did in *Fraidin I*, that there was evidence before the jury that Fraidin's net worth was varied from $225,000 to in excess of $3 million. Accordingly, the trial court did not abuse its discretion in reducing the award of punitive damages to $1.5 million.

III.

Pursuant to our remand, the trial court held a preliminary hearing on November 20, 1992, concerning the award of punitive damages. At that hearing, appellees represented to the trial court that the stay in bankruptcy had been lifted. In fact, the order lifting the stay in bankruptcy van not filed until December 1, 1992.

As Fraidin sees it, the preliminary hearing held on November 20th violated the automatic stay in bankruptcy, rendering the hearing on remand held on February 25, 1993, invalid. Again, we do not agree.

We recognize that "an order of a State court entered in violation of. . an automatic stay under § 362 of the Bankruptcy code. . . is void *ab initio* and without legal affect." *Home Indemnity v. Killian*, 94 Md. App. 205, 218, 616 A.2d 906, *cert. granted*, 330 Md. 458 (1992). Nonetheless, we remind Fraidin that the hearing of Novemnber 20, 1992 was simply a preliminary hearing. Consequently, we fail to see how Fraidin, or his case in the United States Bankruptcy Court, was in any manner harmed by the November 20th proceeding. The judgment appealed from in the case at hand was entered by the trial court after the hearing on remand held on February 25, 1993. This was well after the automatic stay had been lifted. There was no error.

**JUDGMENT AFFIRMED.**
**COSTS TO BE PAID**
**BY APPELLANT.**

**MANDATE**
Court of Special Appeals

No. 935, September Term, 1993

Jacob Fraidin, et al.
v.
Andre Weitzman, et al.

JUDGMENT: March 29, 1994: Per Curaim filed.
Judgment affirmed. Costs to be paid by appellant.

April 28, 1994: Mandate issued.

STATEMENT OF COSTS:

In the Circuit Court: for BALTIMORE CITY
86044069B , CL46184

| | |
|---|---|
| Record | 60.00 |
| Stenographer Costs | 142.50 |
| * Total * | 202.50 * |

In the Court of Special Appeals

| | |
|---|---|
| Filing Record on Appeal (Pacific & North) | 50.00 |
| Filing Record on Appeal (Fraidin) | 50.00 |
| Printing Brief for Appellant | 158.40 |
| Reply Brief | 554.40 |
| Portion of Record Extract-Appellant | 234.00 |
| * Total * | 1046.80 * |
| Printing Brief for Appellee | 2451.60 |
| * Total * | 2451.60 * |

| | | |
|---|---|---|
| JACOB FRAIDIN et al. | * | **In the** |
| v. | * | **Court of Appeals** |
| ANDRE R. WEITZMAN etal. | * | **of Maryland** |
| | * | **Petition Docket No. 154, Sept. Term 1994** |
| | * | **(No. 935, Sept. Term 1993, Court of Special Appeals)** |

**ORDER**

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY

Chief Judge

Date: September 14, 1994

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1428

September Term, 1991

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Jacob Fraidin, et al

v.

Andre R. Weitzman, et al

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Andre R. Weitzman, et al

v.

Lawrence D. Coppel, et al

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Wilner, C. J.
Bishop,
Alpert,
JJ.

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Opinion by Bishop, J.

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Filed: September 4, 1992

## INTRODUCTION

In this opinion we dispose of two appeals that have been consolidated. The first appeal, filed by Jacob Fraidin (Fraidin) and his corporations, Pacific Mortgage & Investment Group, Ltd. and North American Credit Corporation (the corporations), is from a judgment entered after a jury awarded compensatory and punitive damages against Fraidin and the Corporations in favor of Sheldon H. Braiterman, P.A. (Braiterman, P.A.) and Andre R. Weitzman (Weitzman), appellees.

The second appeal, filed by Braiterman, P.A. and Weitzman, is from a judgment entered in favor of defendants below, appellees, Melvyn J. Weinstock (Weinstock), his law firm, Weinberger, Weinstock, Sagner, Stevan & Harris, P.A. (Stevan & Harris) and Lawrence D. Coppel (Coppel) and his law firm, Gordon, Feinblatt, Rothman, Hoffberger & Hollander (Gordon, Feinblatt).

As a prerequisite to understanding the issues involved in the case sub judice, it is necessary to relate the background of the underlying case out of which this appeal arose.

On May 24, 1982, Ray Dorman (Dorman) and Margarette Dorman (Mrs. Dorman) (collectively the Dormans) hired Sheldon H. Braiterman (Braiterman), James D. Johnson (Johnson), and Andre R. Weitzman, of Braiterman & Johnson, P.A. to represent them in an action against Fraidin and the Corporations. The Dormans executed a Power of Attorney and Contingent Fee Arrangement (the Contract) that provided they were to pay their attorneys 1/3 "if terminated without suit," 40 percent "if suit is filed but there is no trial," and 50 percent "if suit is tried on all amounts recovered by settlement or verdict." The Contract further provided that the Dormans were to reimburse their attorneys for expenses advanced, including court costs.

On April 1, 1985, Weitzman started his own law firm. The Dormans executed a new Contract, dated April 10, 1985, with the same fee arrangement but appointing only Weitzman as their attorney. Fraidin and the Corporations employed Weinstock, of Stevan & Harris, to represent him in the defense of the Dormans' lawsuit. On September 23, 1985, the jury returned a verdict in favor of the Dormans against Fraidin and the Corporations and awarded the Dormans $366,949.86 in compensatory and punitive damages, plus interest and costs. The present litigation involves the fee the Dormans owed Braiterman, P.A. and Weitzman as a result of the litigation between the Dormans and Fraidin which was settled directly with the Dormans by Fraidin.

Braiterman & Johnson P.A. and Weitzman initiated this suit in the Circuit Court for Baltimore City by filing a Complaint against: the Dormans, Fraidin, the Corporations, Weinstock and Stevan & Harris, Coppel, and Gordon, Feinblatt. Count I alleged that the Dormans breached the terms of the Contract. In the alternative to Count I, Count II alleged that the Dormans were required to pay Braiterman & Johnson P.A. and Weitzman for the reasonable value of their services under the theory of quantum meruit. Count III alleged that the Dormans defrauded Braiterman & Johnson P.A. and Weitzman. Count IV alleged that Fraidin, the Corporations, Weinstock, Stevan & Harris, Coppel, and Gordon, Feinblatt tortiously interfered with the Contract. Count V alleged that all of the defendants--Fraidin, the Corporations, Weinstock, Stevan & Harris, Coppel, Gordon, Feinblatt, and the Dormans--engaged in a civil conspiracy to accomplish the breach of the Contract. Punitive damages were sought under Counts IV and V. The court (Noel, J.) later granted Fraidin's motion for judgment on Count II (quantum meruit). Although it is unclear

from the record what the disposition was of Count III (fraud), the parties have indicated it was dismissed.

Trial initially commenced in January 1990, but ended in a mistrial. After the second trial, commenced on September 18, 1990, the jury returned a verdict for Braiterman, P.A. and Weitzman against the Dormans, Fraidin, and the Corporations; it returned a verdict in favor of defendants Weinstock, Stevan & Harris, Coppel, and Gordon, Feinblatt (collectively Lawyer Defendants). The jury assessed the following damages: Count I (breach of contract)--$12,500 "plus interest" in compensatory damages each to Braiterman, P. A. and Weitzman; Count IV (tortious interference with contract)--$91,737.47 "plus interest" in compensatory damages each to Braiterman, P.A. and Weitzman; Count V (Civil Conspiracy)--the jury determined that the Dormans, Fraidin, and the Corporations, but not the Lawyer Defendants, conspired to interfere with the Contract, but that Braiterman, P.A. and Weitzman did not sustain any damages as a result of the conspiracy. The jury determined punitive damages should be assessed against Fraidin and the Corporations, but not against the Dormans. A second phase of the trial was commenced to determine the amount of punitive damages. The jury assessed punitive damages against Fraidin and the Corporations in favor of Weitzman in the amount of $2,500,000, and in favor of Sheldon Braiterman, P.A, in the amount of $500,000. Although Braiterman & Johnson P.A. is the party named as the plaintiff in the complaint, the verdict sheet indicates punitive damages were assessed in favor of "Plaintiff, Sheldon Braiterman, P.A." Possibly, there was an amendment during trial, but we find no explanation of the discrepancy in the record or the briefs. In this opinion we will refer to Braiterman, P.A.

To say that the trial was exhaustive is an understatement. The trial lasted for 29 days, and the record extract before this

Court consumes over 4,000 pages. The parties disputed much of the evidence. We relate the facts as we have garnered them from the record.

FACTS

Shortly after obtaining judgment for the Dormans in Dorman v. Fraidin, Weitzman began efforts to collect from Fraidin by filing Interrogatories in Aid of Enforcement of Judgment and a Request for Production of Documents in Aid of Execution. As a result, Weitzman obtained Fraidin's application to Atlantic Bonding Company, Inc., filed in the summer of 1985, in which Fraidin, under oath, stated combined personal and corporate assets slightly in excess of $3,000,000. The brief of Braiterman, P.A. and Weitzman refers to another financial statement made by Fraidin to the Western Surety Company showing Fraidin's net worth to be $3,125,000 as of June 30, 1985. Our review of this document and the accompanying trial testimony indicates that the document showed Fraidin's net worth to be $3,158,300 as of June 30, 1985. In November 1985, settlement discussions regarding the judgment in Dorman v. Fraidin developed. These negotiations are central to the allegations of Braiterman, P.A. and Weitzman that the defendants tortiously interfered with the Contract, therefore we recount these negotiations in detail.

On November 1, 1985, Fraidin, without Weinstock, met with Weitzman and Braiterman to discuss settlement. Fraidin testified he offered to settle the underlying action for $100,000 over five years, or $60,000 payable immediately. Fraidin's post-trial motions in the underlying action were denied on November 7, 1985.

On November 12, 1985, Fraidin hired additional counsel from Gordon, Feinblatt to handle the post-judgment proceedings in Dorman v. Fraidin, and to advise him of his options in light

of the judgment, including the possibility of filing bankruptcy. Coppel, a specialist in bankruptcy at Gordon, Feinblatt, was assigned Fraidin's case. Coppel familiarized himself with the case: he met with Fraidin, obtained the pleadings from Weinstock, reviewed the facts, and arranged for his partner, Lawrence S. Greenwald, a specialist in litigation, to prepare an appeal. Coppel testified that Weinstock continued to represent the Corporations even after Fraidin retained Gordon, Feinblatt. Fraidin's understanding was that Gordon, Feinblatt represented him and the Corporations for appeal of the judgment in Dorman v. Fraidin. Nevertheless, correspondence from Coppel to Weinstock indicates that Gordon, Feinblatt represented Fraidin only, and that Weinstock continued to represent the Corporations. On November 14, 1985, Fraidin, accompanied by Weinstock, met with Braiterman and Weitzman to discuss Fraidin's assets. On November 18th or 20th, Weinstock, on behalf of Fraidin, called Weitzman to discuss the possibility of providing security for the appeal with a non-refundable escrow fund in the amount of $20,000 which the Dormans would keep, regardless of the outcome of the appeal.

Eventually, there was direct contact between Fraidin and the Dormans, although the parties disputed who initiated the contact. It was clear, however, that, on November 25, 1985, Dorman telephoned Weinstock's office and left a message for Fraidin with Weinstock's secretary that Dorman: "[j]ust wants his money back and he'll settle." Fraidin testified that Weinstock delivered the message to him either that day or the next, and that Fraidin called Dorman and arranged to meet with him on Thanksgiving Day, November 28, 1985. Dorman's deposition testimony, which was introduced at trial, indicated that Fraidin telephoned Dorman, and that it was only after this call that Dorman telephoned Weinstock's office. Fraidin denied initiating

the contact. Dorman testified at his deposition that he never placed another call to Weinstock's office, and that he never spoke with any of the attorneys there, only with the secretary with whom he left the message. Weinstock testified that, after Dorman's call, he instructed his employees not to transfer Dorman's calls to him, and not to give out Fraidin's telephone number. Dorman testified at his deposition that he never spoke to any attorney about a settlement. Weitzman's testimony confirmed that neither Weinstock, nor any member of his firm, ever contacted the Dormans directly.

Regardless of who initiated the contact, the uncontroverted evidence was that, on either November 25th or 26th, Fraidin and Weinstock discussed whether it was permissible for Fraidin to contact Dorman directly to discuss settlement. Weinstock advised Fraidin he could talk directly to Dorman. On November 26, 1985, Fraidin questioned Coppel about the propriety of Fraidin's negotiating directly with the Dormans. Coppel explained his understanding of the law to Fraidin: that it is permissible for the parties to a lawsuit to settle directly with each other. Coppel testified that, notwithstanding his opinion on the legality of direct settlement between Fraidin and the Dormans, he counseled Fraidin against such a settlement. In his testimony, Fraidin confirmed that Coppel gave him this advice. On November 27, 1985, Dorman informed Weitzman that Fraidin had called Dorman to set up a meeting. Weitzman advised Dorman to meet with Fraidin only if Weitzman were present.

On Thanksgiving Day, Fraidin met with the Dormans at a bar in east Baltimore. Dorman's deposition testimony indicated the following series of events. Fraidin met Dorman, Weitzman, and Johnson at Tom & Olive's bar. Dorman was drinking that night. Fraidin told Dorman he had $20,000 from "his people" out in the car, and he was willing to settle for that. Fraidin did not

show Dorman the "flash money." Dorman responded he would not settle for $20,000, and suggested a figure of $50,000, and a low interest loan of $120,000 he could use to purchase Tom & Olive's bar. Fraidin declined Dorman's offer and insinuated he could have Dorman "bumped off" if he refused to settle. Fraidin also stated that, if Dorman settled, he would not have to pay Weitzman, and that Fraidin would keep the amount of the settlement confidential. The trial testimony differed significantly from Dorman's deposition testimony. Weitzman's version of events follows. Weitzman went to Tom & Olive's bar with Johnson. Johnson went inside, but Weitzman waited outside. Twenty minutes later Johnson emerged from the bar and told Weitzman that Dorman was very drunk, and that Fraidin, the Dormans, and the bar owner were having a meeting upstairs where he was not allowed. Weitzman telephoned into the bar and reached Mrs. Dorman, who told him Fraidin had some loan papers regarding the bar. Weitzman asked to speak to Dorman. Dorman said Fraidin was talking to him about "selling [sic] the case." At this point, Weitzman and Johnson went inside to the meeting. Weitzman glanced at the papers on the table before Fraidin put them away. They looked like loan applications. When Dorman went downstairs, Weitzman told Fraidin he should not be attempting to settle with a drunk, and that Fraidin was asking for another law suit.

The following day, Fraidin told Coppel about the meeting in the bar. According to Weitzman, Coppel objected to Weitzman's having met with Fraidin without Coppel's being present, and Coppel threatened to institute disciplinary action against Weitzman.

The Saturday after Thanksgiving, November 28, 1985, Fraidin met with Dorman and Weitzman at a McDonald's (restaurant).

According to Dorman's deposition testimony, admitted into evidence at trial, Fraidin made it clear at the meeting that he would not deal with Dorman in Weitzman's presence.

A bizarre conversation involving Dorman and Coppel occurred on December 3, 1985. Dorman, apparently a problem drinker, called Weitzman and demanded to speak with Coppel. Weitzman telephoned Coppel and informed him that Dorman wanted to speak to him. According to Coppel's notes, Dorman, who was apparently drunk, told him that: Fraidin had threatened the Dormans' lives; Fraidin tried to bribe Dorman into not paying Weitzman and Braiterman; and Fraidin said that Weinstock had taken $20,000 out of his own bank account for the settlement. Dorman made comments about meeting Fraidin in a bar and asked Coppel to attend the meeting. Coppel did not attend any meeting.

On December 4, 1985, the Dormans sent a letter discharging Weitzman and Braiterman as their attorneys. The letter read, verbatim:

> "To whom it may concern [sic].
> I Ray Dorman & Margarette Dorman.
> On this fourth day of December 1985 do here by Fire and dismiss Aundra Weitzman. and Sheldon Braiterman. from the case which they were handling for us with Jacob Fraidin."

Dorman stated at his deposition that Fraidin dictated the letter to him over the telephone, and that Mrs. Dorman "typed it up." Dorman testified: "Fraidin told me that I had to write a letter discharging Mr. Weitzman before he could settle the case without Mr. Weitzman present or another attorney." Dorman explained that Fraidin told him to make three copies: one for Weitzman, one for his own records, and one that Fraidin would send a cab

down to pick up. Weitzman stated at trial that he never received this letter from the Dormans, and that Weitzman learned of the letter only through a telephone conversation with Weinstock.

On December 5, 1985, Weitzman wrote Coppel a letter advising him that Dorman was suffering from an extreme case of alcoholism. Weitzman cautioned that "a settlement with Mr. Dorman while under the influence of alcohol and its side effects will only create new litigation in place of or in addition to that now pending." Weitzman suggested that Coppel should urge Fraidin to withdraw his efforts to communicate with the Dormans.

On December 6, 1985, Weitzman met with Dorman and obtained a handwritten statement from Dorman disclaiming the December 4th letter to Weitzman and Braiterman, and asserting that the Dormans had not settled the case. Fraidin testified that he met with Weitzman in the parking lot of the Mount Washington Tavern on December 8, 1985, and told Weitzman that he was going to settle with the Dormans the next day. Fraidin maintained that he invited Weitzman to the settlement, and that Weitzman made his own decision not to be present.

On the morning of December 9, 1985, Weitzman called Dorman from a deposition he was attending in Rockville. Dorman was very excited and told Weitzman he was not going to make any deal with Fraidin unless it was for $175,000. While still in Rockville, Weitzman received a call from Coppel. Coppel said there was a signed letter firing Weitzman, and asked Weitzman if he had evidence of his authority to act for the Dormans. Through a paralegal in his office, Weitzman arranged for Coppel to receive a copy of the Dorman's handwritten statement of December 6, 1985,

On the afternoon of December 9, 1985, the Dormans settled with Fraidin for $50,000 cash. The settlement

proceedings were recorded and transcribed, and a Notice of Satisfaction of Judgment was executed by the Dormans and later filed with the court. At settlement, Fraidin had the Dormans reaffirm the discharge of Weitzman and Braiterman as their lawyers by initialing and dating the discharge letter of December 4th. Fraidin also had the Dormans sign a confidentiality agreement in which they agreed not to disclose the amount of the cash settlement to third parties* Neither Weinstock nor Coppel attended the settlement. Coppel's time records show three telephone calls with Fraidin on December 9, 1985, but the conversations were not admitted into evidence as a result of Fraidin's assertion of attorney-client privilege. Mrs. Dorman testified that sometime after settlement she placed a call to Weitzman's house for her husband. She handed the phone to Dorman, and a heated discussion ensued. Mrs. Dorman testified that when Dorman hung up the telephone he said he had offered to pay Weitzman 50 percent of $50,000, but that Weitzman had rejected that as "peanuts." Weitzman denied that the "peanuts" conversation ever occurred.

On December 10, 1985, Weinstock called Braiterman and, with Weitzman on the extension, advised that Fraidin had settled with the Dormans. The following day, Weitzman and Braiterman filed a Motion to Set Aside the Order of Satisfaction. On December 13, 1985, Weitzman wrote two letters, one to the Dormans, and the other to Judge Hinkel, the presiding judge in Dorman v Fraidin. He advised the Dormans that he had filed a motion to set aside the order of satisfaction. He also requested a copy of a statement made by the Dormans, which he learned about from Weinstock and Coppel, in which the Dormans purportedly repudiated testimony they gave at the Dorman v. Fraidin trial. The letter to Judge Hinkel advised the judge that Weinstock and Coppel had copies of a statement by the Dormans

that repudiated their trial testimony, and a transcript of the settlement. On December 18th, Weitzman and Braiterman received a certified letter signed by the Dormans dated December 14, 1985 that stated:

> "We have advised you previously that you have been fired and no longer have the athorety [sic] to repersent [sic] us. We insest [sic] that you dismiss your motion to set aside order of satisfaction and not file any more pleadings on our behalf."

On December 16th, Lawrence Greenwald, of Gordon, Feinblatt, wrote Weitzman to reaffirm Coppel's advice that Weitzman not communicate directly with Fraidin, and to advise him against continuing collection proceedings and making defamatory statements about Fraidin or the Corporations--including furnishing copies of the motion to set aside the order of satisfaction to Fraidin's customers.

A hearing on the motion to set aside the order of satisfaction was held before Judge Hinkel. The Dormans testified that the settlement was voluntary and that they were satisfied with it. Judge Hinkel denied the motion to set aside the order of satisfaction. At the trial in the case sub judice, Weitzman presented evidence, in the form of Dorman's deposition testimony, that Fraidin hired an attorney for the Dormans to appear at the hearing on the motion to set aside the order of satisfaction, and that Fraidin told the Dormans what to say. Dorman testified, at his deposition, that he did not tell the truth in front of Judge Hinkel on December 26, 1986 because of threats Fraidin made against him.

Additional facts are included in our discussion of the issues.

## ISSUES PRESENTED

Appellants Fraidin and the Corporations present these issues:

I. TORTIOUS INTERFERENCE

A. May a claim alleging tortious interference with a contractual relationship be based on an unethical and excessive fee agreement?

B. Does Braiterman, P.A. have standing to sue for tortious interference with contract, when Braiterman was not a party to the contract?

II. EVIDENTIARY ISSUES

A. Did the trial court err in admitting evidence from the Dorman v. Fraidin trial?

B. Was Dorman's unsworn statement properly withdrawn from evidence?

III. COMPENSATORY DAMAGES

A. Are compensatory damages restricted to 50 percent of the $50,000 settlement received by Dorman?

B. Should Fraidin and the Corporations receive credit on the judgments against them for $25,000--the amount of the judgment rendered against the Dormans for breach of contract?

IV. PUNITIVE DAMAGES

A. When a tort arises from a contract and there is evidence that the sole motivating factor for the defendants' conduct was the desire to save money rather than the desire to deliberately injure the plaintiff, can a punitive damage award be upheld?

B. Does the punitive damage award against Fraidin and the Corporations comply with due process requirements?

C. When the jury based its punitive damage award on prejudicial and erroneously admitted evidence from a separate trial, must the punitive damage award be vacated?

V. PREJUDGMENT INTEREST

Did the trial court abuse its discretion in awarding prejudgment interest to appellees?

VI. MISTRIAL - RECUSAL

A. Does the bias of the trial judge, which resulted in the judge incarcerating Fraidin, without due process, warrant a mistrial?

B. Did the trial court err when it (a) refused to refer the motion for recusal to another judge and (b) ultimately denied the motion for recusal?

Appellants Braiterman, P.A. and Weitzman present the following issues in their appeal against appellees Weinstock and Stevan & Harris, and Coppel and Gordon, Feinblatt:

VII. Did the trial court err in permitting Coppel to withhold his testimony of some conversations with Fraidin and notes of all conversations with Fraidin concerning the events occurring between the parties to this case on the basis of attorney-client privilege, where Fraidin asserted at trial that he acted in reliance upon the advice of counsel, where portions of those conversations were voluntarily revealed by Fraidin and Coppel, and where the advice of counsel was used in the perpetration of the tort of interference with contract?

VIII. Did the trial court err in instructing the jury with incorrect and contradictory statements of law concerning an attorney's liability for aiding, encouraging, and assisting a client in the commission of the tort of interference with contract and liability for conspiring with his client to commit that tort?

* * *

*[NOTE: Extensive discussion by the Court of Special Appeals of other issues, as described by the Court (App. pp. 24-25), omitted from Appendix to this Petition, inasmuch as these issues are not pertinent to this Petition.]*

* * *

## IV. PUNITIVE DAMAGES

Appellants challenge the constitutionality of the jury's $3,000,000 punitive damage award ($2,500,000 in favor of Weitzman and $500,000 in favor of Braiterman, P.A,).

### A. Sufficiency of the Evidence

Appellants contend the evidence was insufficient to show they acted with "actual malice" in injuring Braiterman, P.A. and Weitzman. Actual malice refers to "conduct characterized by evil motive, intent to injure, ill will, or fraud." Owens-Illinois, Inc. v. Zenobia, 325 Md. 420, n. 20 at 460 (1992). See also Schaefer v. Miller, 322 Md. 297, 300 (1991) (Actual malice is "the performance of an act without legal justification or excuse, but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the plaintiff.")

There was evidence before the jury from which it could conclude Fraidin "deliberately and wilfully" interfered with the contract between Braiterman, P.A. and Weitzman and the Dormans and that "the interference was purposely done in order to injure" Braiterman, P.A. and Weitzman. Lake Shore Investors v. Rite Aid Corp., 55 Md. App. 171, 181 (1983), aff'd,, 298 Md. 611 (1984). Fraidin stated, in an east Baltimore bar, that if Dorman settled with Fraidin, Dorman would not have to pay Weitzman, and that Fraidin would keep the amount of the settlement confidential. Fraidin made clear at the meeting that occurred at McDonald's that Fraidin would not deal with the

Dormans in Weitzman's presence. Fraidin dictated to the Dormans the letter firing their counsel, and had them reaffirm the discharge by initialing the firing letter at settlement. Weitzman testified Fraidin threatened to sue him. Fraidin explained to Weitzman his strategy was to sue the lawyers that sued him, because "if he gave lawyers who sued him enough trouble... lawyers would stop bringing cases against him." Weitzman testified he had "a clear notion" it was Fraidin's intention to settle the Dorman's case without his being present at the settlement because Fraidin wanted to assure he did not get paid.

When the facts in the case sub judice are compared with facts that courts have found sufficient to constitute actual malice, it is clear to us that the evidence in the case sub judice was sufficient. For example, Lake Shore involved a dispute between a possible tenant, Rite Aid, and a limited partnership that was developing a shopping center, LSI. After negotiations with Rite Aid deteriorated, LSI entered into a lease with Drug Fair. The evidence showed that a representative of Rite Aid vowed "to fix" the partner at LSI who had attempted to negotiate the lease with Rite Aid. Another representative of Rite Aid threatened litigation unless LSI agreed to build a Rite Aid in the shopping center. Counsel for Rite Aid contacted counsel for Drug Fair and said in an "intimidating" voice that Drug Fair could either yield its lease or be in the same shopping center with Rite Aid. The court concluded these facts were sufficient to support an award of punitive damage.

In McClung-Logan Equip. Co., Inc. v. Thomas, 226 Md. 136 (1961), a seller of tractors wrongfully seized a tractor from a buyer who had lodged several complaints about the tractor's performance. In upholding an award of punitive damages, the court found ample evidence from which a jury could find, "that [the seller] acted wilfully, wantonly, and maliciously in utter

disregard of [the buyer's] rights." 226 Md. at 149. The court explained "[i]t was a reasonable and proper inference that" the seller became "provoked" with the buyer's numerous complaints about the tractor's performance and determined to stop the complaints by seizing the tractor and forcing the buyer to sign a release of the claims it might have against the seller. Id. The court further explained that the evidence was particularly clear in light of the seller's insistence that the buyer release all claims against the seller in order to redeem the tractor. Id.

In the case sub judice, there was evidence that Fraidin required the Dormans to discharge Braiterman, P.A. and Weitzman before he would settle the case. In fact, Fraidin was the author of the letter that discharged the Dorman's attorneys. Because Fraidin could have settled with the Dormans without forcing them to discharge their counsel, it is obvious that Fraidin intended to injure Braiterman, P.A. and Weitzman. The evidence was sufficient to show Fraidin's conduct was characterized by evil motive, intent to injure and ill will. Zenobia, id., supra.

Appellants also contend that even if they acted with actual malice, they were not solely motivated by a desire to harm Braiterman, P.A. and Weitzman, but rather by a desire to save money by settling with the Dormans. Appellants cite Knickerbocker Ice Co. v. Gardiner Dairy Co., 107 Md. 556, 569-70 (1908):

> "[I]f, for example, there was evidence tending to show that the defendant had caused the contract to be broken for the sole purpose, and with the deliberate intention of wrongfully injuring the plaintiff, exemplary damages might be recovered, but when the object was merely to benefit itself, although the plaintiff would be thereby injured, there would be no more reason for allowing such damages than there would be in a suit by one party to a contract against the other for breach of it."

(Emphasis added.) We find no merit in appellants' contention that Fraidin was not motivated by a desire to harm Braiterman, P.A. and Weitzman. The argument that Fraidin settled with the Dormans to save money misses the point. Appellants fail to recognize that Fraidin was not sued merely for settling with the Dormans, but for inducing the Dormans to breach their contract with Braiterman, P.A. and Weitzman by making it a condition of settlement that the attorneys not be paid. As we have pointed out, Fraidin could have settled the case with the Dormans without forcing them to discharge their attorneys. Instead, he required that the Dormans discharge their attorneys and facilitated the discharge by providing the text for the discharge letter. Fraidin made it clear that he would not settle with the Dormans unless they fired their attorneys when he required the Dormans to initial the firing letter at settlement.

B. Due Process

In Pacific Mutual Life Ins. Co. v. Haslip, 111 S.Ct. 1032 (1991), the Supreme Court concluded it was possible for a punitive damage award to violate due process. It considered three aspects of the award in determining whether it passed constitutional muster: 1) standards to guide the jury's and the court's discretion; 2) judicial review of jury verdicts; and 3) the amount of the award. In Alexander v. Evander, 88 Md.App. 672 (1991), cert. denied, ___ Md. ___ (1992), Chief Judge Wilner, writing for this Court, analyzed Maryland law in light of the Supreme Court's opinion in Haslip. After outlining case law generated by the Court of Appeals on the issue of punitive damages, he enumerated standards for evaluating punitive damage awards in Maryland, based on that case law, that conform with the requirements implicit in Haslip. Those standards are as follows:

"[P]unitive damages:

(1) may be imposed only where there is "outrageous conduct," Nast v. Lockett, 312 Md. 343, 349, 539 A.2d 1113 (1988), quoting from Black's Law Dictionary 352 (5th ed. 1979);

(2) may be awarded only upon a showing of "actual malice" on the part of the defendant, i.e., "the performance of an act without legal justification or excuse, but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the plaintiff" or, in certain kinds of cases, subject to further refinement by the Court of Appeals, "implied malice," i.e., "conduct of an extraordinary nature characterized by a wanton or reckless disregard for the rights of others," Schaefer v. Miller, 322 Md. 297, 300, 587 A.2d 491 (1991);

(3) "are to punish the wrongdoer, to teach him not to repeat his wrongful conduct and to deter others from engaging in the same conduct," Wedeman v. City Chevrolet Co, 278 Md. 524, 531, 366 A.2d 7 (1976);

(4) "must relate to the degree of culpability exhibited by a particular defendant and that party's ability to pay." Embrey v. Holly, 293 Md, 128, 142, 442 A.2d 966 (1982);

(5) "represent a civil fine, and as such, should be imposed on an individual basis," Id.; and

> (6) may be awarded only upon proof of actual loss and thus may *not* be awarded unless there is also an award of compensatory damages; Shell Oil Co. v. Parker, 265 Md. 631, 640, 291 A.2d 64 (1972); Rite Aid Corp. v. Lake Shore Inv.,, 298 Md. 611, 626, 471 A.2d 735 (1984)."

Alexander, 88 Md.App. at 715-16 (footnote omitted). Judge Wilner concluded that "[t]aken together . . . [the principles enunciated in the cases] suffice in our view to 'reasonably accommodate [the defendant's] interest in rational decision making and [the State's] interest in meaningful individualized assessment of appropriate deterrence and retribution.'" Id. at 716 (quoting Haslip, 111 S.Ct. at 1044). In Medical Mutual Liability Ins. Society of Maryland v. B. Dixon Evander & Assoc., Inc., ___ Md. App. ___, No. 1752, September Term,, 1991, slip op. at 25, filed July 13, 1992, this court summarized the application of the due process standards set forth in both Haslip and Alexander as follows:

> "that the jury should be carefully instructed as to these standards; that the trial judge should review the verdict, apply the same standards and assure that the size of the award will "accomplish society's goals"; and that the amount of the award should be reviewed for excessiveness."

(citations omitted).

Appellants argue that the punitive damage award does not comport with due process because the trial court gave inadequate and inconsistent jury instructions on actual malice, which is the standard all parties agree applies to this case. On December 17, 1990, the court instructed the jury:

> "In addition to damages compensating the plaintiffs for their actual damages, you may, but are not required to, award punitive damages. In this case you are being called upon to first declare whether or not you find that punitive damages should be awarded to the plaintiffs. If you so find, then you shall be given additional instructions.
>
> In order to determine whether or not punitive damages should be awarded, you must find that the defendants had actual malice toward the plaintiffs as their sole motivation for their actions and that their acts were committed for the principle [sic] purpose and deliberate intention of wrongfully injuring the plaintiffs rather than protecting their own interest. The actual malice must be toward the plaintiffs, not against the Dormans, in order to award punitive damages to the plaintiffs.
>
> * * *
>
> Actual malice exists if the conduct complained of was performed in such a manner and under such circumstances as to show that it was without legal justification or excuse and it also was influenced or motivated by hatred or spite or ill will and was performed for the sole purpose to intentionally and deliberately injure or cause damage or loss to the plaintiffs."

The jury sheet, which the jurors were permitted to take to the jury room asked:

> "Should punitive damages be assessed against the Defendants Fraidin and North American Credit Corp. and Pacific Mortgage and Investment Group?"

Appellants contend the jury verdict sheet was inconsistent with the oral instruction because the jury sheet made no reference to the actual malice requirement. This "inconsistency," appellants argue, "rendered the jury incapable of properly assessing whether punitive damages could be awarded." There is no inconsistency. The verdict sheet need not repeat the oral instructions given to the jury. The jury heard the instructions, and presumably utilized them properly in determining that punitive damages should be assessed against appellants. Because there is no inconsistency, the authority cited by appellants, Rosenkovitz v. United Ry. & Elec. Co. 108 Md. 306, 316-17 (1908), (oral instructions inconsistent with written instructions) is inapplicable.

Appellants also contend that the instructions given during the punitive damage phase of the trial were inconsistent with the previous instructions and were erroneous. Appellants complain the instructions lacked any reference to the fact that punitive damages could not be assessed against appellants unless they acted with actual malice, and unless their sole motivation was to injure Braiterman, P.A. and Weitzman. Following the presentation of evidence in the punitive damages phase of the trial, the court gave the following instructions:

> "Now, your previous verdict was an award to the plaintiffs to compensate them for the actual damages they sustained. You may also award them additional damages known as punitive damages. Punitive damages are awarded to punish a defendant who acted the way he did because of malice or intent to cause injury or damage or loss and also to deter others from acting in a similar fashion. Malice or intent with which you are to concern yourselves must be against the plaintiffs and not the malice or intent, if any, that focused on the Dormans.

> Now, there is no exact rule by which to determine the amount of punitive damages. You may fix such amounts as in the exercise of your sound discretion you find will serve to punish the defendants and deter others from acting in similar ways. The financial conditions of the defendants may be considered in determining the amount of damages. Now, there need not be any ratio relationship between the amount of compensatory damages and the amount of punitive damages you assess, if any. In determining the amount of punitive damages you may consider the degree of malice shown by the evidence to have accompanied or motivated the Defendants' conduct."

Based on the instructions given in the previous phase of the trial, including instructions on malice and motivation, the jury determined that punitive damages should be assessed against appellants. Instructions on the malice and motivation necessary to support an award of punitive damages were pertinent only to the jury's decision of whether to award punitive damages. Because the jury already determined that punitive damages should be assessed against appellants, instructions on the malice and motivation necessary to support an award of punitive damages were irrelevant. The purpose of the punitive damages phase of the trial was to determine the amount of punitive damages. Whether such an award was warranted had already been determined by the jury. Appellants were not entitled to have the instructions on actual malice and motivation re-read to the jury.

Appellants further complain that the post-trial procedures were insufficient because the trial court made no effort to determine whether the punitive damages award comported with due process. As explained in Alexander, "the circuit courts in Maryland have broad discretion to review jury verdicts for

excessiveness." 88 Md. App. at 716. "A trial judge, upon finding a verdict excessive, may order a new trial unless the plaintiff will agree to accept a lesser sum fixed by the court." Banegura v. Taylor, 312 Md. 609, 624 (1988). In determining whether the award is excessive, the trial court essentially applies the same standards the jury did. Alexander, 88 Md. App. at 716. "This discretionary review, tempered by those standards, 'provides an additional check on the jury's. . . discretion[.]'" Id. at 717 (quoting Haslip, 111 S. Ct. at 1045).

Appellants filed a post-trial Motion for Judgment Notwithstanding the verdict or Revision of the Judgment or a New Trial ("post-trial motion"). The court interpreted this motion to include a motion for remittitur. After listening to extensive argument regarding the amount of the punitive damage award, the trial court denied appellants' motion. Appellants complain the trial court made no analysis on the record as to why the punitive damage award should stand.

Even in the wake of Haslip, there is no requirement in Maryland that a trial court state on the record its reasons for interfering or not interfering with a jury verdict. Medical Mutual, slip op. at 31. We have reasoned that

> "[t]he federal rules of civil procedure contain no express requirement that a court specify the grounds upon which it is acting in granting or denying a motion for new trial or remittitur...[t]hus, to require as a matter of constitutional law a procedure like Alabama's...[in Haslip, requiring the trial court to state its reasoning on the record,] in every case would be contrary, not only to practice consistently followed by a number of states (such as Maryland), but also to the well-established federal practice. Moreover, there would seem to be some instances in which it is clear from the record, without any express findings by the trial judge, that a punitive damage award is not excessive."

Id. at 32 (citations omitted) (emphasis added).

We conclude in the case sub judice, that the trial judge undertook an appropriate review of the jury's award. It is clear from the court's comments at the hearing that the court's conclusion not to disturb the jury's verdict was based on its decision that the evidence supported the award. Although the trial court did not explicitly state it found Fraidin acted with actual malice, this finding is implicit from the court's decision and discussions with counsel. We are not satisfied, however, that the trial court adequately considered whether the amount of the jury's award offended notions of due process. Evidence introduced regarding appellants' net worth did not support the amount of the jury's award. We explain.

In Alexander, we stated, among the principles articulated by the Court of Appeals in various cases, punitive damages "must relate to the degree of culpability exhibited by a particular defendant and that party's ability to pay." 88 Md. App. at 716 (quoting Embrey v. Holly, 293 Md. 128, 142 (1982) (emphasis added)). Although eschewing any desire to "engage in a proportionality review of punitive damage awards, 88 Md. App. at 721, in deciding whether the award in Alexander comported with due process, we did compare it with other awards. We noted that the largest award, of which we are aware, rendered by a Maryland court was $7,500,000 in Potomac Electric v. Smith, 79 Md. App. 591 (1989) (Utility company permitted a high voltage wire to remain downed in an area frequented by children which subsequently caused the electrocution of a child.). The next highest award allowed to stand was $910,000 against Exxon Corporation in Exxon Corp. v. Yarema, 69 Md. App. 124 (1986) (Action against corporation whose storage tanks leaked gasoline that interfered with landowners' property rights.). We also

commented that other than these awards, most have been well under $100,000. 88 Md. App. at 720.

What disturbs us about the award in the case sub judice is not the particular amount of the award, but its proportion to appellants' wealth. Evidence regarding appellants' net worth was controverted. Information prepared by Fraidin, for litigation purposes, placed his personal wealth at $250,000, and the Corporations' in the red as of June 1990. Fraidin's sworn application to the Western Surety Company, introduced by Braiterman, P.A. and Weitzman, showed Fraidin's net worth (including corporate assets) to be over $3,000,000, as of June 1985. Fraidin did not produce copies of his income tax returns for 1988, 1989, or 1990. The jury was entitled to reach its own conclusions regarding appellants' net worth; however, no estimates appear to be higher than in the area of $3,000,000. Thus, the $3,000,000 punitive award was essentially equivalent to the maximum approximation of appellants' net worth. When a punitive damage award consumes a defendant's total wealth, it has ceased to serve the societal goal of punishment. A defendant need not be financially destroyed in order to be punished.

In Mattison v. Dallas Carrier Corp., 947 F.2d 95 (4th Cir. 1991), Judge Neimeyer expressed his concern that a defendant's wealth should not only be a relevant factor in awarding punitive damages, but a limiting factor. In declaring South Carolina's procedure regarding punitive damage awards denied the defendant due process, Judge Neimeyer recognized that South Carolina did not have a requirement that:

> "punitive damages bear any specified relationship to the wealth of the defendant. While the court decisions state that the financial ability of the defendant is a relevant factor for consideration by the jury, it is apparently not limiting, and there is no requirement that the defendant have a means to pay."

Id. at 100. (emphasis added). The court noted that since Haslip was decided, the Supreme Court of South Carolina has adopted new guidelines for the review of punitive awards. One such guideline was "defendant's ability to pay." Id. Applying the new guidelines, the court directed the trial court on remand to instruct the jury that:

> "Any penalty must be limited to punishment and thus may not effect economic bankruptcy. To this end, the ability of the defendant to pay any punitive award entered should be considered."

Id. at 110.

Other courts have characterized the defendant's ability to pay as a limiting factor which must be considered by the jury in the first instance, and the trial court upon its review of the jury's award. In Smith v. Telophase Nat'l Cremation Soc'y. Inc., 471 So. 2d 163 (Fla. Dist. Ct. App. 1985), a jury awarded Smith $1,250,000 in punitive damages (in addition to compensatory damages) after Telophase failed to dispose of decedent's ashes in accordance with specific instructions. Finding the punitive damage award excessive, the trial court ordered a new trial in the event a remittitur was rejected. Id. at 164, The District Court of Appeal of Florida held that the trial court properly found the punitive damage award to be excessive:

> [T]he only evidence in the record as to the assets of (Telophase) show a net worth of approximately $1,000,000.
>
> Accordingly, on the face of the record as we have it, punitive damages in an award of $1,250,000 would clearly bankrupt the corporation. It is error for a punitive damage award to be in an amount which will result in economic castigation or bankruptcy of a defendant.

Id. at 170.

In Adams v. Murakami, 813 P.2d 1348 (Cal. 1991). the Supreme Court of California addressed the excessiveness of a punitive damage award. Although the issue in Adams was whether evidence of the defendant's financial condition is a prerequisite to the award of punitive damages, and if so, who bears the burden of proof, the Court made, in passing, several notable comments. The Court recognized that a punitive damage award "can be so disproportionate to the defendant's ability to pay that the award is excessive *for that reason alone*." Id. at 1351 (emphasis in original). The Court reiterated its explanation in Neal v. Farmers Ins. Exch., 582 P.2d 980 (Cal. 1978), that "the purpose of punitive damages is not served by financially destroying a defendant. The purpose is to deter, not to destroy." Id. at 1352. The court acknowledged that "'the absence of evidence of net worth precludes an appellate court from deciding whether an award might, for example, bankrupt the defendant.'" Id. at 1353 (quoting Dumas v. Stocker, 213 Cal. App. 3d 1262, 1269 (Cal. Ct. App. 1989)); see also MGW, Inc. v. Fredricks Deve Corp., 5 Cal. App. 4th 92, 111-12 (Cal. Ct. App. 1992) ("All that is necessary in cases where punitive damages are awarded is some evidence from which a reasonable jury and reviewing courts can conclude the award will deter but not cripple the defendant financially."); Wollersheim v. Church of Scientology, 4 Cal. App. 4th 1074, 1095 (Cal. Ct. App. 1992) (reversing punitive damage award because it constituted 150 percent of defendant's net worth); Gerard v. Ross, 204 Cal. App. 3d 968, 980 (Cal. Ct. App. 1988) ("[j]ury misunderstood the purpose of punitive damages and/or acted out of passion or prejudice" because it awarded a $100,000 punitive damage award against the defendant law firm which had a net worth of $100,000 and an annual not income between $90,000 and $150,000); McDonough v. Jorda, 519 A.2d 874, 879 (N.J. Super.

Ct. App. Div. 1986), cert. denied, 489 U.S. 1065 (1989) ("[A] jury must take into consideration the wealth of the defendants. This is so because the theory behind punitive damages is to punish for the past event and to prevent future offenses, and the degree of punishment resulting from a judgment must be, to some extent, in proportion to the means of the guilty person."); Nelson v. Jacobsen, 669 P.2d 1207, 1219 (Utah 1983) ("[T]he defendant's net worth and income are always relevant in determining the amount of punitive damages that would be appropriate for punishment."); cf. Green Oil Co. v. Hornsby, 539 So. 2d 218, 222 (Ala. 1989) (Financial position of defendant is not to be considered by the jury in awarding punitive damages but is "a consideration essential to a post-judgment critique of a punitive damages award."). But see Hensley v. Paul Miller Ford, Inc., 508 S.W.2d 759, 764 (Ky. 1974) ("[I]n actions for punitive damages the parties may not present evidence or in anywise advise the jury of the financial conditions of either side of the litigation."); Peisner v. Detroit Free Press, 242 N.W.2d 775, 780 (Mich. Ct. App. 1976) (holding that the financial status of the defendant is immaterial, because the purpose of punitive damages in Michigan is to fully compensate the plaintiff, not punish the defendant).

Appellants argued in their post-trial motion that the amount of the punitive damage award was excessive because it was "outrageous, and should shock the conscience of the court." In a supplemental statement of points and authorities, the corporate appellants asserted that the "pecuniary circumstances of the Defendant are to be considered" and in this case, the jury "acted arbitrarily and granted punitive damages which will consume the Defendants' net worth." At the post-trial motion hearing, the following colloquy ensued:

Mr. Steele: That award is way out of kilter with the conduct to be deterred and the actual amount of compensatory damages awarded on that. I would also say that when you add in the evidence on net worth Mr. Hettleman has advised me that the net worth of Mr. Hettleman and the two corporations --

The Court: You mean Mr. Fraidin.

Mr. Steele: Sorry. I mean Mr. Fraidin and the two corporations.

The Court: I don't know Mr. Hettleman's net worth.

Mr. Steele: I didn't ask him that, your honor. I shouldn't have said that. He indicated to me that he thought the evidence before the jury was something in the area of 3 to 3.3 million dollars insofar as the two corporations and Mr. Fraidin is concerned.

I would submit that based on the conduct to be deterred, that is the interference with the fee agreement and the conduct that relates to that issue and to the net worth of the individual and the two corporate entities, that it is an excessive award because it in effect is the whole shooting match.

The Court: I tried a case involving one of the major asbestos insulation companies and as to one plaintiff the jury verdict was one million dollars compensatory -- and I am trying to remember the rest of it -- and 74 million dollars punitive.

Now, does that make it out of line just on those figures?

> Mr. Steele: Well, we don't know what the net worth of the asbestos company was, your honor.
>
> The Court: Suppose the jury heard evidence that the net worth of the asbestos company was around 75 million dollars.
>
> Mr. Steele: I think it would be excessive and I think the courts would find that.
>
> The Court: Okay.

Notwithstanding the foregoing arguments, the trial court denied appellants' post-trial motion.

Therefore, in accord with this court's decisions in Medical Mutual and Alexander, and the guidance provided by the Florida and California courts, we hold that although punitive damages are appropriate in the case sub judice, the jury did not properly consider appellants' wealth in making its punitive damage award. Upon its review of the amount of the award, the trial court did not "assure that the size of the award [would] 'accomplish society's goals,' Medical Mutual, slip op. at 25, and disregarded the disastrous consequences the award would have on appellants' future existence. Had the trial court considered appellants' net worth, it would have required a remittitur, or ordered a new trial on the amount of punitive damages. Consequently, the punitive damage award does not comport with due process because the award "fails to serve its proper purpose" and exceeds "an amount that will accomplish society's goals of punishment and deterrence," Alexander, 88 Md. App. at 717, quoting in part from Haslip, 111 S.Ct. at 1045.

Under these circumstances, we are faced with three possible courses of action:

> "(i) assume an authority implicit from Haslip to modify the award ourselves and reduce it to what we regard as the proper amount, either directly or by ordering a new trial as to punitive damages in lieu of a remission by ...[Braiterman, P.A. and Weitzman]
>
> (2) vacate the award and remand it for reconsideration by the trial judge in the exercise of his authority to require a further remittitur; or
>
> (3) vacate the award and direct a new trial on that issue."

Alexander, 88 Md. App. at 721. We will not choose the first option absent clear direction from the Court of Appeals if other options exist. Id. at 722. Because the trial court did not consider appellants' net worth during its review of the jury's punitive damage award, we shall vacate the award and remand the case to the trial court for its reconsideration of granting a remittitur, or if rejected, a new trial.

Appellants did not raise as an issue the adequacy of the jury instructions regarding the consideration of appellants' wealth. In order to guide the trial court in the event it orders a new trial, we shall briefly address what must be included in the trial court's jury instructions in light of our holding. See Rule 8-131(a).

When it came time to instruct the jury as to how they were to arrive at an amount of punitive damages, the trial court explained:

> Now there is no exact rule by which to determine the amount of punitive damages. You may fix such amounts as in the exercise of your sound discretion you find will serve to punish the defendants and deter others from acting in similar ways. The financial conditions of the defendants may be considered in determining the amount of damages, Now, there need not be any ratio relationship between the amount of compensatory damages and the amount of punitive damages you assess, if any, In determining the amount of punitive damages you may consider the degree of malice shown by the evidence to have accompanied or motivated the defendants' conduct.

Should a new trial be necessary, the trial court, in addition to the foregoing instructions and any other instructions heretofore required on this issue, shall, at the request of the defendants, include an instruction by which the jury is advised that the amount of the punitive damage award should represent an appropriate punishment to appellants taking into account, as a limiting factor, evidence of their financial status. To this end, the jury may only punish appellants for their conduct, not destroy or bankrupt them. Of course, a defendant requesting this instruction may not object to the introduction of evidence of net worth.

C. Admission of Evidence from Dorman v. Fraidin

Because we have held supra that the "erroneously admitted evidence" was not erroneously admitted, we will not address this issue.

V. PREJUDGMENT INTEREST

Appellants contend that the trial court award erred in awarding Braiterman, P.A. and Weitzman prejudgment interest on the compensatory award entered against appellants for tortious interference with contract because: 1) there was no sum certain on which prejudgment interest could be calculated; 2) the jury's

addition of the words "plus interest" after the amount of the compensatory award was insufficient to satisfy the requirement in Md. Rule 2-604(a) that an award of prejudgment interest be "separately stated in the verdict"; 3) the award was calculated incorrectly at the rate of ten percent. We agree with appellants that the award of prejudgment interest fails to satisfy the requirements of Rule 2-604(a).

"Under Maryland law the general rule is that prejudgment interest should be left to the discretion of the jury, or the trial court when sitting without a jury." Merrick v. Mercantile-Safe Deposit & Trust Co., 855 F.2d 1095, 1106 (4th Cir. 1988) (citing I.W. Berman Properties v. Porter Brothers. Inc., 276 Md. 1, 18-19 (1975)). Rule 2-604(a) provides:

> "Any prejudgment interest award by a jury or by a court sitting without a jury shall be separately stated in the verdict or decision and included in the judgment."

Here, the jury was not instructed that it could award prejudgment interest. When the jury returned its verdict, however, it indicated Braiterman, P.A. and Weitzman were each to receive "91,737.47 plus interest." During the hearing at which judgment was entered, counsel for appellants argued:

> "[I]f there is going to be prejudgment interest, it has to be asked for and it has to be separately stated. It was not separately stated, nor was it separately asked for."

Rule 2-604(a) requires that an award of prejudgment interest be "separately stated in the verdict." We are convinced that, unless a jury is instructed on prejudgment interest, the mere addition of the words "plus interest" after the amount of the compensatory award is insufficient to satisfy the requirement. In Eden v. Amoco Oil, Co., Id., 741 F. Supp. 1192 (D.Md. 1990) Judge Neimeyer explained:

> "Prejudgment interest is an aspect of damage which is awarded to compensate a plaintiff for the loss of use of money. As the Supreme Court observed in West Virginia v. United States, 479 U.S. 305, 310-11 n.2, 107 S.Ct. 702, 710 n. 2, 93 L. Ed. 2d 639 (1987), "[p]rejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress."
>
> Because prejudgment interest is an element of the plaintiff's damages, the decision to include it as part of an award properly lies with the finder of fact.
>
> * * *
>
> The notion that prejudgment interest is discretionary with the fact finder, however, does not authorize a court, once a jury has determined damages, to add to those damages a sum for prejudgment interest. The allowance of prejudgment interest would have been discretionary with the jury had it been presented to the jury for consideration and had Eden requested the Court so to instruct the jury. No such claim was presented to the jury and no such request for instruction was made by Eden. It is not within the province of the Court to add to the verdict that which was within the province of the jury."

741 F. Supp. at 1196-97. (Emphasis added.) Whether to allow prejudgment interest was not presented to the jury sub judice. No instruction was requested. The jury's gratuitous addition of the words "plus interest" is insufficient to satisfy the requirement in Rule 2-604(a) that an award of prejudgment interest be "separately stated in the verdict." Without some instruction an prejudgment interest, we cannot be certain that the jury intended

to award prejudgment interest when it said "plus interest." Absent a clear and separate statement from the jury that the compensatory award should include prejudgment interest, the trial judge erred in awarding it.

* * *

*[NOTE: Extensive discussion by the Court of Special Appeals of other issues, as described by the Court (App. pp. 24-25), omitted from Appendix to this Petition, inasmuch as these issues are not pertinent to this Petition.]*

* * *

IN THE FIRST APPEAL, AWARD OF PUNITIVE DAMAGES VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; JUDGMENT FOR PREJUDGMENT INTEREST REVERSED; IN ALL OTHER RESPECTS, JUDGMENTS IN FAVOR OF BRAITERMAN, P.A. AND WEITZMAN AFFIRMED. COSTS TO BE PAID 80% BY APPELLANTS AND 20% BY APPELLEES. IN THE SECOND APPEAL, JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

**MANDATE**
Court of Special Appeals

No. 1428, September Term, 1991

Jacob Fraidin, et al.
v.
Andre R. Weitzman et al.

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Andre R. Weitzman, et al.
v.
Lawrence D. Coppel, et al.

JUDGMENT: September 4, 1992: Opinion by Bishop, J.
In the first appeal, award of punitive damages vacated and case remanded for further proceedings consistent with this opinion; judgment for prejudgment interest reversed; in all other respects, judgments in favor of Braiterman, P.A. and Weitzman affirmed. Costs to be paid 80% by appellants and 20% by appellees. In the second appeal, judgments affirmed. Costs to be paid by appellants.

October 5, 1992: Mandate issued.

STATEMENT OF COSTS:

In the Circuit Court for Baltimore City
86044969, CL46184

| | |
|---|---|
| Record | 50.00 |
| Stenographer Costs | 13039.50 |
| * Total * | 13089.50 * |

As to Jacob Fraidin et al v. Andre R. Weitzman et al:

| | |
|---|---|
| Filing Record on Appeal | 50.00 |
| Brief of Appellants (Fraidin Appellants) | 262.80 |
| Joint Record Extract (Fraidin Apppellants) | 16254.00 |
| Reply Brief (Fraidin Appellants) | 72.00 |
| * Total * | 16638.80 |

| | |
|---|---|
| Brief of Appellees (Weitzman and Braiterman, P.A.) | 295.20 |
| * Total * | 295.20 * |

As to Andre R. Weitzman et al. v. Lawrence D. Coppel et al:

| | |
|---|---|
| Filing Record on Appeal | 50.00 |
| Brief of Appellants (Weitzman and Braiterman P.A.) | 169.20 |
| Reply Brief (Weitzman and Braiterman, P.A.) | 46.80 |
| * Total * | 266.00 * |

| | |
|---|---|
| Brief of Appellees (Coppel Gordon and Feinblatt) | 176.40 |
| Brief of Appellees (Weinstock, Weinberger and Weinstock) | 205.20 |
| * Total * | 381.60 * |

| | | |
|---|---|---|
| JACOB FRAIDIN et al. | * | In the |
| v. | * | Court of Appeals |
| ANDRE R. WEITZMAN etal. | * | of Maryland |
| | * | Petition Docket No. 496, Sept. Term 1992 |
| | * | (No. 1428, Sept. Term 1991, Court of Special Appeals) |

**ORDER**

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY

Chief Judge

Date: January 14, 1993

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ANDRE WEITZMAN, ET AL,

PLAINTIFFS

V. NO. 86044069/CL46184

JACOB FRAIDIN, ET AL,

DEFENDANTS

**REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS**

BALTIMORE, MARYLAND
FEBRUARY 25, 1993

BEFORE:

THE HONORABLE THOMAS E. NOEL, JUDGE

APPEARANCES:

PATRICK A. O'DOHERTY, ESQUIRE,
ANDRE WEITZMAN, ESQUIRE, ON BEHALF
OF THE PLAINTIFFS

JACOB FRAIDIN, PRO SE

REPORTED BY:

LESLIE ELISE GROSS,
OFFICIAL COURT REPORTER

**PROCEEDINGS**

THE COURT: LET THE RECORD REFLECT WE ARE HERE IN THE MATTER OF ANDRE WEITZMAN, ET AL, VERSUS JACOB FRAIDIN, ET AL, AND THIS IS CASE NUMBER 86044069 CIVIL LAW NUMBER 46184.

COUNSEL, WOULD YOU IDENTIFY YOURSELVES FOR THE RECORD, PLEASE AND YOUR RESPECTIVE CLIENT?

MR. O'DOHERTY: PATRICK O'DOHERTY FOR THE PLAINTIFFS.

MR. WEITZMAN: I HAVE BEEN IN PROPER PERSON ON ALL OF THE POST-JUDGMENT PROCEEDINGS, AS THIS GOES DIRECTLY TO THE MERITS, I WOULD JUST LIKE TO HAVE THIS REFERRED BACK TO MR. O'DOHERTY TO ADDRESS EVERYTHING THAT GOES TO THE MERITS OF THE CASE.

THE COURT: VERY WELL.

MR. WEITZMAN: MY NAME IS ANDRE WEITZMAN.

THANK YOU.

MR. FRAIDIN: JACOB FRAIDIN, IN PROPER PERSON, FOR THE DEFENDANT.

THE COURT: AND MR. O'DOHERTY IS, IN FACT, REPRESENTING BRAITERMAN AND JOHNSON, P.A., AS WELL AS ANDRE WEITZMAN IN THIS MATTER.

THE RECORD SHOULD REFLECT THAT ON JANUARY 27, 1991, A JURY IN THIS COURT RENDERED VERDICTS IN THE AMOUNT OF TWO MILLION, FIVE HUNDRED THOUSAND DOLLARS AS PUNITIVE DAMAGES IN FAVOR OF ANDRE WEITZMAN, AND A VERDICT OF FIVE HUNDRED THOUSAND DOLLARS IN FAVOR OF SHELDON BRAITERMAN, P.A..

THE CASE WAS THEN APPEALED TO THE COURT OF SPECIAL APPEALS, AND IN A REPORTED OPINION, THE COURT ESSENTIALLY AFFIRMED THE ENTIRE PROCEEDING WITH THE EXCEPTION OF THE PUNITIVE DAMAGE AMOUNT.

WHAT THE COURT DETERMINED WAS THAT THE AMOUNT OF PUNITIVE DAMAGES AGAINST MR. FRAIDIN --- AND IT SHOULD BE NOTED THAT A SPECIAL VERDICT SHEET WAS SUBMITTED TO THE JURY, AND THE JURY DETERMINED THAT PUNITIVE DAMAGES SHOULD NOT BE ASSESSED AGAINST THE DEFENDANTS RAY AND MARGUERITE DORMAN, BUT PUNITIVE DAMAGES SHOULD BE ASSESSED -- THE PUNITIVE DAMAGES SHOULD BE ASSESSED AGAINST JACOB FRAIDIN AND NORTH AMERICAN CREDIT CORPORATION AND PACIFIC MORTGAGE GROUP, AND THIS VERDICT WAS ENTERED, AS I INDICATED, BY WAY OF A SPECIAL VERDICT SHEET, ON DECEMBER THE 18, 1990.

THE COURT OF SPECIAL APPEALS DETERMINED THAT DURING THE TRIAL, THE TOTAL VALUE OF MR. FRAIDIN'S ESTATE WAS IN THE NEIGHBORHOOD OF THREE MILLION DOLLARS, AND THAT THE PUNITIVE DAMAGE VERDICT WAS ESSENTIALLY TO THE EXTENT OF MR. FRAIDIN'S TESTIFIED-TO VALUE, THE COURT THEN DETERMINED THAT THAT WOULD BE A VIOLATION OF DUE PROCESS, AND THAT THE PUNITIVE DAMAGES WERE TO BE CONSIDERED AS A PENALTY, BUT NOT FOR THE PURPOSES OF BANKRUPTING AN INDIVIDUAL.

WE THEN HAD A MEETING IN THIS MATTER TO DETERMINE HOW WE SHOULD PROCEED, AND A

QUESTION CAME UP AS TO WHETHER OR NOT IN A -- IN A REMITTITUR HEARING WOULD ADDITIONAL EVIDENCE BE PROPER REGARDING THE DEFENDANT'S WEALTH, OR IS THE COURT ESSENTIALLY BOUND BY THE EVIDENCE THAT WAS ADDUCED IN TRIAL ON THIS PARTICULAR ISSUE.

I ASKED COUNSEL TO BRIEF THAT PARTICULAR ISSUE, MR. WEITZMAN DID IN FACT, SUBMIT A BRIEF DETAILING HIS POSITION UNDER THE SIGNATURE OF HE AND MR. O'DOHERTY DETAILING HIS POSITION CONCERNING THIS ISSUE.

MR. FRAIDIN HAD CERTAIN QUESTIONS, BUT NEGLECTED TO SUBMIT A BRIEF, AND WITH THAT, COUNSEL, I AM WILLING TO ENTERTAIN ANY COMMENTS YOU MAY HAVE BEFORE WE ACTUALLY PROCEED ON THE MERITS OF THIS MATTER.

MR. FRAIDIN?

MR. FRAIDIN: MAY I BE HEARD FIRST OR SHOULD THE PLAINTIFFS?

THE COURT: IF YOU HAVE COMMENTS, MR.FRAIDIN, I'D LIKE TO HEAR THEM.

MR. FRAIDIN: FIRST, YOUR HONOR, WITH ALL DUE RESPECT TO THE COURT, I BELIEVE THE COURT OF SPECIAL APPEALS, OTHER THAN JUST REMANDING, REVERSED ALL INTERESTS ON THE JUDGMENT AS PART OF THEIR DECISION.

ALSO, YOUR HONOR, WITH ALL DUE RESPECT, I BELIEVE THAT THE COURT OF SPECIAL APPEALS, IN THEIR OPINION, STARTING ON PAGE 44, BASICALLY SAID THAT THERE WAS CONTROVERTED EVIDENCE AS TO WHAT THE NET WORTH OF THE DEFENDANTS WERE.

STATEMENTS WERE SUBMITTED BY MR. FRAIDIN SHOWING A NET WORTH OF TWO HUNDRED AND FIFTY THOUSAND DOLLARS, AND ALSO STATEMENTS WERE ENTERED INTO EVIDENCE BY THE PLAINTIFFS IN THE CASE REVERTING BACK TO THE 1985, '86, ERA SHOWING -- ONE FINANCIAL STATEMENT SHOWING A NET WORTH OF APPROXIMATELY THREE HUNDRED AND SIXTY-THREE THOUSAND, AND THEN TWO FINANCIAL, FOR LACK OF BETTER TERMS, STATEMENTS THAT WERE PRESENTED TO WESTERN SURETY AND TO ATLANTIC BONDING SHOWING A DISPUTED AMOUNT OF THREE MILLION OR HOWEVER THE COURT ARTICULATED IT.

I DON'T BELIEVE THE COURT SAID THAT THE JURY HAD MADE A DECISION IN THEIR DELIBERATION THAT THE THREE MILLION DOLLAR STATEMENT WAS ACCURATE. THEY JUST SAID THAT THE JURY DID WHAT THEY DID.

TODAY, I WOULD ATTEMPT TO ASK YOUR HONOR TO HEAR CERTAIN TESTIMONY PRESENTED BY ME AND PRESENTED ALSO BY THE FEDERAL BANK EXAMINER WHO WAS APPOINTED IN THIS CASE TO MAKE DETERMINATIONS AS TO WHETHER THE NET WORTHS OF JACOB FRAIDIN WERE AS STATED IN STATEMENTS PRESENTED TO BONDING COMPANIES IN 1985, OR IN ACCORDANCE WITH FINANCIAL STATEMENTS AND FEDERAL DISCLOSURES MADE UNDER THE PENALTIES OF PERJURY TO THE FEDERAL BANKRUPTCY COURT.

IF YOUR HONOR, IN HIS DISCRETION, CHOOSES NOT TO LET THIS ADDITIONAL INFORMATION COME BEFORE THE BENCH, I WOULD ALSO POINT OUT THAT

IN A PUNITIVE DAMAGE AWARD, IF A CASE, TO GIVE AN EXAMPLE, WOULD START IN 1970 AND THE NET WORTH OF THE DEFENDANTS BE A HUNDRED THOUSAND DOLLARS, AT THE CONCLUSION OF THAT CASE, FOR WHATEVER THE DELAY PURPOSES WOULD BE, IF IT CONCLUDED IN 1980 AND THEN THE DEFENDANTS, DUE TO A WINDFALL PROFIT OR A LOTTERY WIN, HAD INCREASED THEIR NET WORTH FROM ONE HUNDRED THOUSAND TO FIVE MILLION, THE JURY HEARING THIS PUNITIVE DAMAGE ASPECT OF THE CASE WOULD NOT BE CONSIDERING THE HUNDRED THOUSAND DOLLAR NET WORTH OF 1970, BUT THEY WOULD BE CONSIDERING THE NOW NET WORTH OF THE DEFENDANTS IN 1980, FIVE MILLION DOLLARS, AND OBVIOUSLY, THE CONVERSE WOULD WORK ALSO.

IF A NET WORTH, ALLEGEDLY, WAS, AS THE PLAINTIFFS WOULD HAVE THIS COURT BELIEVE, THREE MILLION DOLLARS IN 1985 INSTEAD OF THREE HUNDRED AND SIXTY-THREE THOUSAND, THIS CASE TAKING PLACE IN 1980, THE NET WORTH OF JACOB FRAIDIN AT THAT JUNCTURE WOULD BE THE GUIDING FACTS, THE WAY I READ THE OPINION OF THE C.S.A.

I WOULD ALSO POINT OUT TO YOUR HONOR, AND I HOPE NOT TO BE PRESUMPTUOUS OF ME, I'M SURE YOUR HONOR HAS READ THE OPINION. WE ATTEMPTED AT VARIOUS JUNCTURES TO HAVE INDEPENDENT AUDITORS APPOINTED TO FERRET OUT THE TRUTH OF WHAT JACOB FRAIDIN'S NET WORTH WAS.

AT A HEARING, I BELIEVE BEFORE YOUR HONOR IN MAY OF 1991, MY PRIOR ATTORNEY, NEVETT

STEELE, WHO, PRIOR TO GOING INTO PRIVATE PRACTICE, WAS A FEDERAL PROSECUTOR, HAD RECOMMENDED THE FIRM OF TORTOWITZ AND PENSIC, HIGHLY RESPECTED IRS CRIMINAL INVESTIGATORS, AUDITORS AND EXAMINERS.

OBVIOUSLY, THEY WERE GOING TO PUT ME UNDER THE MICROSCOPE, AND COUNSEL HAD ADVISED ME OF THAT BEFORE HE PRESENTED THESE PEOPLE TO THE COURT. I SAID GO FORWARD WITH IT.

THE ONLY CREDITOR THAT OBJECTED TO THE APPOINTMENT OF THESE PEOPLE WERE THE PLAINTIFFS, ANDRE WEITZMAN AND SHELDON BRAITERMAN.

WHY? WHY WOULD SOMEBODY WHO HAD BEEN MAKING THESE ALLEGATIONS AGAINST THE DEFENDANT ALL THROUGH THE TRIAL, THAT HE WAS HIDING ASSETS, THAT HE WAS CONVERTING MONEY, THAT HE WAS SENDING IT OUT OF THE COUNTRY, THAT HE WAS DOING EVERYTHING IMPROPER, WHY WOULD THEY OBJECT TO AN EXAMINER OF THE QUALIFICATION OF TORTOWITZ AND PENSIC BEING APPOINTED? I BELIEVE EVEN YOUR HONOR HAD SOME QUESTION TO THAT AT THE HEARING HERE.

I THINK IT'S OBVIOUS WHY. BECAUSE AFTER THAT EXAMINATION, IF, IN FACT, WHAT FRAIDIN HAD SAID WAS TRUE AND FORTHRIGHT, ALL OF THE ATTACKS AND THE VICIOUS CREDIBILITY ASSAILING OF FRAIDIN BY WEITZMAN WOULD FALL ON DEAF EARS. HE WOULD THEN BE ABLE TO PRESENT TO THIS COURT DOCUMENTATION BY INDEPENDENT EXAMINERS THAT WHAT HE HAD SAID WAS THE TRUTH.

NOW, AFTER -- AFTER COMING UP WITH SOME MERITLESS REASON WHY TORTOWITZ AND PENSIC SHOULDN'T BE APPOINTED -- I BELIEVE MR. BRAITERMAN SAID THEY WERE CONDUCTING SOME EXAMINATION, SOME CRIMINAL EXAMINATIONS ON SOME OF HIS CLIENTS AND HE FELT THAT THERE WAS A CONFLICT. IT WOULD BE MY CONFLICT IF I WISH TO INVOKE IT, NOT HIS. MR. STEELE AND I BOTH ADVISED THE COURT THAT WE HAVE NO CONFLICT. THEY WERE NOT APPOINTED.

AT SOME TIME SUBSEQUENTLY, BANKRUPTCY WAS FILED BY THIS DEFENDANT. OTHER EXAMINERS WERE PRESENTED TO JUDGE TEALE, I BELIEVE HIS NAME -- I BELIEVE THAT'S THE NAME OF THE FEDERAL BANKRUPTCY JUDGE IN WASHINGTON. THEY OBJECTED TO THAT.

THE ONLY CREDITOR THAT OBJECTED WAS WEITZMAN AND BRAITERMAN.

THE JUDGE APPOINTED ON HIS OWN, AFTER DUE EXAMINATION AND PRESENTING IT TO ALL CREDITORS TO SEE IF THERE WAS ANY CONFLICT, MR. ANDREW WOLFSON, A FEDERAL EXAMINER, TO CONDUCT THE SURVEY.

THE JUDGE ALSO GRANTED MR. WEITZMAN A 2004(K) EXAMINATION PURSUANT TO THE ALLEGATIONS THAT HE MADE OF MYSELF AND OF MORRIS HELLMAN WHO WAS TRADING AS BARCLAY NATIONAL MORTGAGE GROUP. THEY ALSO GRANTED TO MR. WEITZMAN ACCESS TO EVERY BANK ACCOUNT, SUBPOENA POWER, ALL CERTIFIED CHECKS, EVERYTHING THAT HE WOULD NEED TO SUBSTANTIATE HIS VEILED ALLEGATIONS AGAINST

THIS DEFENDANT.

AFTER TWO YEARS, MR. WEITZMAN --I FILED BANKRUPTCY IN AUGUST OF '91. EXCUSE ME. APPROXIMATELY TWO YEARS AGO. AFTER TWO YEARS, MR. WEITZMAN HAS NOT BEEN ABLE TO PRODUCE FOR THE BANKRUPTCY COURT OR FOR YOUR HONOR ONE SHRED OF CREDIBLE EVIDENCE TO SUBSTANTIATE HIS ALLEGATIONS THAT I HAD FRAUDULENTLY MISREPRESENTED TO THIS COURT MY NET WORTH.

HE'S TAKEN THE EXAMINATIONS, HE'S GONE AFTER EVERY PRIVATE INVESTOR I HAVE HAD. HE STAYED AWAY FROM THE BANKS AND THE BUILDING AND LOANS BECAUSE THEY WERE CAPABLE OF DEFENDING THEMSELVES. HE'S INTERFERED WITH BUSINESS RELATIONSHIPS OF MINE. HE'S VIRTUALLY ESTOPPED ME FROM MAKING A LIVING, AND I BELIEVE THE REASONS ARE THAT I WOULD NOT BE ABLE TO PROPERLY DEFEND MYSELF. ALBEIT, WHATEVER THE REASONS WERE, IT WAS DONE.

THE FEDERAL EXAMINER, MR. WOLFSON HAS BEEN ON THIS CASE FOR APPROXIMATELY TEN MONTHS. HE'S CONDUCTED WHATEVER EXAMINATION HE FELT WAS NECESSARY. I WOULD LIKE, AT SOME JUNCTURE, TO BE ABLE TO PLACE HIM ON THE STAND FOR MY EXAMINATION OR MY DIRECT TESTIMONY FROM HIM, AND I GUESS FOR ANY CROSS-EXAMINATION.

I HAVE OTHER POINTS THAT I WOULD LIKE TO BRING OUT TO THE COURT. I AM NOT SURE IF THEY WOULD BE AFTER THE PLAINTIFFS ---

THE COURT: WHAT DO THEY DEAL WITH?

MR. FRAIDIN: EXCUSE ME, YOUR HONOR?

THE COURT: WHAT DO THE POINTS ADDRESS?

MR. FRAIDIN: THEY ADDRESS, BASICALLY, MY INTERPRETATION OF THE C.A.'S -- OF THE COURT OF SPECIAL APPEALS' INSTRUCTIONS TO YOUR HONOR.

AND AGAIN, I SAY THIS WITHOUT ANY DISRESPECT. I AM TRYING TO MAKE A RECORD, AND I AM ATTEMPTING TO -- TO READ IT THE WAY I SEE IT. OBVIOUSLY, IT MAY BE -- MAY BE NOT EXACTLY THE WAY YOUR HONOR SEES IT.

IF I MAY PROCEED FORWARD, THE COURT ARTICULATED IN THEIR ASSESSMENT OF PUNITIVE DAMAGES, AND THEY RECITED THREE PUNITIVE DAMAGES AWARDS IN THIS STATE. ONE, I BELIEVE, WAS ---

THE COURT: MR. FRAIDIN, LET'S BACK UP A BIT.

WHAT POINT IS IT THAT YOU ARE TRYING TO MAKE? AND THEN GIVE ME THE AUTHORITY YOU HAVE FOR THE POINT. I'D LIKE TO KNOW THE POINT YOU ARE TRYING TO ADDRESS FIRST.

MR. FRAIDIN: MY POINT IS, YOUR HONOR, IS THAT YOUR HONOR MAY, IN HIS DISCRETION, CONSIDER WHATEVER FINANCIAL INFORMATION THAT HE DEEMS APPROPRIATE IN ORDER TO GRANT ANY REMITTITUR THAT HE DEEMS APPROPRIATE.

THAT HE IS NOT BOUND BY A STATEMENT THAT WAS GIVEN INTO EVIDENCE BY THE PLAINTIFFS THAT WAS ESSENTIALLY WRITTEN IN 1985. THIS CASE OCCURRED IN 1990.

THE DEFENDANT'S NET WORTH MAY BE WAY UP, OR YET IT MAY BE WAY DOWN, OR IT MAY BE WHATEVER IT IS.

THAT A FEDERAL BANKRUPTCY HAS BEEN FILED, THAT PART OF -- PART OF THE DIRECTION OF THE APPELLATE COURT WAS THAT THE PUNISHMENT OR PUNITIVE DAMAGES FOR THE MALICE THAT THEY HAVE -- HAVE RULED ON IS NOT TO DESTROY THE DEFENDANT, AND THEY USED THE VERY TERM, "BANKRUPT HIM."

WELL, I HAVE BEEN BANKRUPT. I HAVE FILED. THOSE SCHEDULES ARE BEFORE THE COURTS. THEY HAVE BEEN ---

THE COURT: MR. FRAIDIN, THAT'S MIXING APPLES AND ORANGES, BUT -- I DON'T WANT TO DEBATE IT.

MR. FRAIDIN, IT HELPS TREMENDOUSLY WHEN YOU GIVE ME THE POINT YOU ARE TRYING TO MAKE AND THEN GIVE ME YOUR AUTHORITY AS OPPOSED TO YOU JUST TALKING ABOUT SOMETHING AND THEN GETTING TO THE POINT.

MR. FRAIDIN: OKAY, YOUR HONOR. EXCUSE ME.

THE POINT I WOULD LIKE TO MAKE IS THAT -- THAT YOUR HONOR SHOULD CONSIDER THE CURRENT NET WORTH OF THE DEFENDANT IN MAKING HIS DETERMINATION IF ANY PUNITIVE DAMAGES SHOULD BE ASSESSED.

I BELIEVE THAT THE AUTHORITY IS THE OPINION OF THE COURT OF SPECIAL APPEALS.THAT BASICALLY SAYS, IN THEIR OPINION, THAT THE PUNISHMENT DAMAGES SHOULD BE COMMENSORATE WITH THE NET WORTH OF THE DEFENDANTS AT THE TIME THAT THE PUNISHMENT DAMAGES ARE AWARDED, NOT AT SOMETIME IN THE FUTURE, OR NOT AT SOMETIME IN THE PAST. NOW THAT'S MY LIBERAL

READING OF THE OPINION.

THE COURT: WHAT PAGE?

MR. FRAIDIN: I BELIEVE ON PAGE 50 OF THE SLIP OPINION, YOUR HONOR, OF WHICH I HAVE MADE A COPY TO PASS UP TO THE COURT IF YOUR HONOR WISHES.

THE COURT: FINE.

MR. FRAIDIN: ON THE PUBLISHED OPINION, IT MAY WELL BE 1069.I WAS USING THE OPINION THAT WAS SENT TO ME WHEN I DID IT.

IT SAYS IN THERE, "CONSEQUENTLY THE PUNITIVE DAMAGE AWARD DOES NOT COMPORT WITH DUE PROCESS, BECAUSE THE AWARD FAILS TO SERVE ITS PROPER PURPOSE AND EXCEEDS AN AMOUNT THAT WILL ACCOMPLISH SOCIETY'S GOALS OF PUNISHMENT AND DETERENT."

IT THEN GIVES THREE POSSIBILITIES THAT THEY COULD ---

"UNDER THESE CIRCUMSTANCES WE ARE FACED WITH THREE POSSIBLE COURSES OF ACTION."

SHOULD I READ THOSE INTO THE RECORD?

THE COURT: GO AHEAD.

MR. FRAIDIN: "ONE, ASSUME AN AUTHORITY IMPLICIT FROM HAYSLIP TO MODIFY THE AWARD OURSELVES AND REDUCE IT TO WHAT WE REGARD AS THE PROPER AMOUNT EITHER DIRECTLY OR BY ORDERING A NEW TRIAL AS TO PUNITIVE DAMAGES IN LIEU OF A REMISSION BY BRAITERMAN, P.A. AND WEITZMAN."

I DON'T BELIEVE AT THIS JUNCTURE THAT THEY HAVE GIVEN A REMISSION,

"TWO, VACATE THE AWARD AND REMAND IT

FOR RECONSIDERATION BY THE TRIAL JUDGE IN THE EXERCISE OF HIS AUTHORITY TO REQUIRE A FURTHER REMITTITUR.

"OR THREE, VACATE THE AWARD AND DIRECT A NEW TRIAL ON THAT ISSUE."

THEY CITE ALEXANDER AT 721 MARYLAND 88, I BELIEVE THEY ARE SPEAKING TO THIS CASE NOW: "WE WILL NOT CHOOSE THE FIRST OPTION--"

THE COURT: SLOW DOWN.

MR. FRAIDIN: "--ABSENT CLEAR DIRECTION FROM THE COURT OF APPEALS IF OTHER OPTIONS EXIST." I.D. AT 722.

"BECAUSE THE TRIAL COURT DID NOT CONSIDER APPELLANT'S NET WORTH DURING ITS REVIEW OF THE JURY'S PUNITIVE DAMAGE AWARD WE SHALL VACATE THE AWARD AND REMAND THE CASE TO THE TRIAL COURT FOR ITS CONSIDERATION OF GRANTING A REMITTITUR OR, IF REJECTED, A NEW TRIAL."

AND THEN IT GOES ON TO GIVE CERTAIN GUIDELINES TO YOUR HONOR SHOULD A NEW TRIAL BE GRANTED.

ON PAGE 52, "SHOULD A NEW TRIAL BE NECESSARY, THE TRIAL COURT, IN ADDITION TO THE FOREGOING INSTRUCTIONS AND ANY OTHER INSTRUCTIONS HERETOFORE REQUIRED ON THIS ISSUE SHALL, AT THE REQUEST OF THE DEFENDANTS, INCLUDE AN INSTRUCTION BY WHICH THE JURY IS ADVISED THAT THE AMOUNT OF THE PUNITIVE DAMAGE AWARD SHOULD REPRESENT AN APPROPRIATE PUNISHMENT TO APPELLANTS, TAKING INTO ACCOUNT, AS A LIMITING FACTOR, EVIDENCE OF

THEIR FINANCIAL STATUS."

MY LIBERAL READING OF THAT MEANS THAT THEIR FINANCIAL STATUS AT THIS TIME, NOT AT A TIME IN THE FUTURE OR AT A TIME EIGHT OR NINE YEARS AGO ALLEGEDLY.

"TO THIS END, THE JURY MAY ONLY" -- AND THIS IS UNDERLINED," -- PUNISH APPELLANTS FOR THEIR CONDUCT, NOT DESTROY OR BANKRUPT THEM.

"OF COURSE, A DEFENDANT REQUESTING THIS INSTRUCTION MAY NOT OBJECT TO THE INTRODUCTION OF EVIDENCE OF NET WORTH."

I WOULD SUBMIT THAT MY AUTHORITY IS THE DIRECTION OF THE COURT OF SPECIAL APPEALS. THEY DO CITE IN THERE THAT ABSENT CERTAIN DIRECTION FROM THE COURT OF APPEALS -- MAYBE THAT DIRECTION HAS OCCURRED SINCE CERTAIN PUNITIVE DAMAGE AWARDS HAVE BEEN VACATED IN THIS CASE. I AM NOT SURE IF IT'S OCCURRED YET OR NOT OR IF IT IS RETROACTIVE TO THIS CASE.

I BELIEVE WHAT THE COURT HAS SAID IS THAT IT IS WITHIN YOUR HONORIS DISCRETION, AND I WOULD RESPECTFULLY REQUEST THAT AN INDEPENDENT FEDERAL EXAMINER BE PERMITTED TO GIVE HIS TESTIMONY AS TO WHAT HE HAS UNCOVERED AS TO THE NET WORTH AND THE STATEMENTS CONCERNING JACOB FRAIDIN, AND I WILL REST AT THIS TIME.

THE COURT: MR. O'DOHERTY?

MR. O'DOHERTY: MAY IT PLEASE THE COURT, I -- I WOULD ASSUME THAT YOUR HONOR -- YOU REFERRED TO THE MEMORANDUM OF LAW PREPARED BY MR. WEITZMAN AND SENT IN UNDER OUR JOINT

SIGNATURES, AND I ASSUME YOU READ THAT OVER, SO I WOULD BEGIN BY SAYING JUST ESSENTIALLY THAT -- AND WE HAVE GIVEN A COPY OF THIS TO MR. FRAIDIN, THAT ABSENT ANY --- ANY -- WELL, I THINK THIS IS THE LAW OF THE CASE, AND THAT THE ISSUE IS NOT AS MR. FRAIDIN NOW SAYS IT WOULD BE, BUT IT'S THE EVIDENCE THAT WAS BEFORE THE JURY AT THE TIME IT MADE ITS AWARD.

NOW -- AND CONSEQUENTLY, IT'S OUR VIEW, AS WE URGED HERE, THAT NO NEW EVIDENCE COULD BE INTRODUCED IN THESE PROCEEDINGS WHEN THE COURT IS CONSIDERING A MOTION FOR REMITTITUR BASED UPON THE EVIDENCE THAT WAS PRODUCED BEFORE THE JURY THAT AWARDED THE DAMAGES.

I WOULD SPEAK TO, IF IT'S REALLY NECESSARY, THE OTHER STATEMENTS MADE BY MR. FRAIDIN, BUT ESSENTIALLY, JUST BRIEFLY, IT WOULD SERVE IN OUR -- IN OUR JUDGMENT, EVEN IF WE WERE TO PUT ASIDE OR IF YOUR HONOR WAS TO DECIDE THAT THE CASES THAT WE'VE CITED ARE NOT THE LAW OF THIS CASE, THAT IT REALLY IS MEANINGLESS TO HEAR ANY EVIDENCE FROM MR. FRAIDIN'S WITNESSES IN THIS CASE BECAUSE OF MR. FRAIDIN'S POST-VERDICT CONDUCT, AND WHAT WE HAVE ALL LEARNED SINCE THEN WITH REGARD TO MONEYS THAT HE HAD AT THAT TIME AND DIDN'T REPORT TO ---

THE COURT: PLEASE ELABORATE.

MR. O'DOHERTY: PARDON?

THE COURT: PLEASE ELABORATE.

MR. O'DOHERTY: THE COURT'S ORDER OF JULY 17, 1981 HAD -- '91, I'M SORRY, HAD GRANTED ANCILLARY RELIEF IN AID OF EXECUTION AND AN

INJUNCTION IN AID OF EXECUTION AFTER A HEARING WITH REGARD TO MR. FRAIDIN, AND WHAT WAS DONE THERE --- WHAT WE SAW WAS POST-VERDICT HE HAD MADE ARRANGEMENTS TO TRANSFER ASSETS IN BARCLAY'S BANK TO FREEPORT THE BAHAMAS.

THAT, NUMBER TWO, A CASHIER'S CHECK FROM THE SECOND NATIONAL BANK OF MARYLAND HAD BEEN ATTACHED IN THE SUM OF FIFTY-TWO THOUSAND, ONE HUNDRED AND FIFTY DOLLARS, PAYABLE TO FRAIDIN DATED DECEMBER 21, 1991, AND THAT THAT HAD BEEN DEPOSITED IN THE MELON BANK EAST IN PHILADELPHIA, AND WE ALSO ATTACHED A COPY OF A CASHIER'S CHECK FROM THE SECOND NATIONAL BANK IN THE SUM OF FORTY-SIX THOUSAND, FOUR HUNDRED TWENTY-THREE DOLLARS, PAYABLE TO JACOB FRAIDIN DATED DECEMBER 21, 1990 AND DEPOSITED IN THE CITIZEN'S BANK OF MARYLAND.

WE ATTACHED THERETO OUR MOTION UPON WHICH THE ANCILLARY RELIEF WAS GRANTED, ANSWERS TO INTERROGATORIES IN AID OF EXECUTION BY THE CITIZEN'S BANK IDENTIFYING AN ACCOUNT NUMBER TITLED A UNIFORM GIFT TO MINORS. MR. FRAIDIN WAS THE TRUSTEE FOR MICHAEL FRAIDIN, AND AGAIN, SIMILARLY, ONE FOR BRIAN FRAIDIN, AND JACOB FRAIDIN AS TRUSTEES FOR LAURA FRAIDIN AND MICHAEL FRAIDIN.

THEN WE ALSO ATTACHED A COPY -- AND AS -- FOR THE RECORD, THOSE FOLKS ARE OVER TWENTY-ONE AND WERE OVER TWENTY-ONE AT THE TIME OF THESE TRANSFERS, AND THEN THERE WAS ALSO ATTACHED AN EXHIBIT DATED MARCH 15, 1990 FROM

THE ESTATE OF CORRINE FRAIDIN TO JACOB FRAIDIN THE SUM OF A HUNDRED THOUSAND DOLLARS WHICH HE DEPOSITED IN THE SECOND NATIONAL BANK.

THERE IS PLAINTIFFS' EXHIBIT 6, A CHECK FOR SEPTEMBER 5, 1990 FROM THE ESTATE OF CORRINE FRAIDIN TO JACOB FRAIDIN IN THE SUM OF A HUNDRED THOUSAND DOLLARS DEPOSITED IN LOYOLA FEDERAL SAVINGS.

THERE WAS A CHECK NUMBER 7 DATED NOVEMBER 2, 1990 FROM THE ESTATE OF CORRINE FRAIDIN TO JACOB FRAIDIN IN THE SUM OF SEVENTY-ONE THOUSAND ZERO SEVENTY-FIVE, TWENTY-TWO DEPOSITED IN MARYLAND NATIONAL BANK, AND ON AND ON, YOUR HONOR. THERE ARE PAGES OF IT.

I THINK FOR THE RECORD AT THIS TIME I WOULD OFFER HERE IN EVIDENCE A -- THE COPY OF THE ORDER OF -- FOR -- GRANTING ANCILLARY RELIEF WHICH SETS FORTH ALL OF THESE TRANSFERS OF MONEY AND MONEYS THAT WERE ACCUMULATED BY MR. FRAIDIN AFTER HE HAD GIVEN TESTIMONY TO THIS JURY THAT HE HAD A NEGATIVE NET WORTH.

IN ADDITION TO THAT, WHEN HE IS TALKING HERE ABOUT HIS BANKRUPTCY FILINGS, AND IF I MIGHT JUST POINT OUT WITH REGARD TO THAT ISSUE, THAT ALTHOUGH HE TESTIFIED IN THIS COURT THAT HE HAD A NEGATIVE NET WORTH, WHEN HE WENT INTO BANKRUPTCY, HE LISTED ASSETS OF 1.2 MILLION DOLLARS. HE DID NOT DISCLOSE MORTGAGES THAT HE HAD AND SOME OF WHICH WERE TRANSFERRED TO HIS PARTNER IN BARCLAY, AND -- AND THERE WAS JUST A MULTITUDE OF -- NOT A MULTITUDE, BUT THERE WERE MANY FACTS THAT SET FORTH WHAT HE

DID THAT REALLY CONSTITUTED A FRAUD ON THE JURY, AND YOUR HONOR HEARD ALL OF THAT OCCUR IN HIS CASE.

BUT WHAT WE HAVE IS THAT WHEN -- THE ONLY STATEMENT THAT FRAIDIN NEVER DID GIVE WHEN IT WAS NOT FOR THE PURPOSE OF LITIGATION WHERE HIS INTEREST WAS TO MINIMIZE WHAT HE HAD WAS THAT STATEMENT THAT HE GAVE TO WESTERN SURETY SHOWING HIS ASSETS OF THREE MILLION A HUNDRED TWENTY-FIVE THOUSAND -- EXCUSE ME, ROUGHLY THREE MILLION -- I THINK IT WAS THREE MILLION A HUNDRED TWENTY-FIVE THOUSAND DOLLARS IN THAT STATEMENT TO WESTERN SECURITY.

SO AS -- AS THE -- MR. FRAIDIN HAS CITED WHAT THE COURT OF SPECIAL APPEALS HAS HAD TO SAY IN ITS OPINION, BUT REALLY, WHAT -- WHAT IT SAYS IS THAT IT MAKES A -- I HAVE A COPY OF IT HERE, YOUR HONOR, BUT THE LEFT-HAND SIDE OF IT IS NOT READABLE IN SOME -- I THINK YOU CAN READ IT, BUT MAY I JUST SUPPLY A COPY OF THAT, BECAUSE THESE REFERENCES THAT MR. FRAIDIN HAS MADE AS TO THE SLIP OPINION AND WE HAVE GIVEN HIM A COPY OF THE -- OF THIS DOCUMENT THAT WE JUST PHOTOCOPIED, AND I THINK YOU CAN READILY SEE THE COMPARISON I BELIEVE WAS ON PAGE 1070, 1070 OF THE ---

THE COURT: IT'S 1063.

MR. O'DOHERTY: 1063? OKAY.

NOW, YOUR HONOR, JUST -- I DID MAKE A LIST HERE AND -- THAT I AM TRYING TO LOCATE --- I THINK THAT WHAT THE COURT OF SPECIAL APPEALS HAS

SAID, IN ESSENCE, IS REPORTED AT PAGE -- FOR INSTANCE, AT 1063, THAT THE -- THAT IT DECIDED THAT THERE WAS A SUFFICIENCY OF EVIDENCE OF MALICE, EVIL MOTIVE WITH THE INTENT TO INJURE AND THERE WAS ILL-WILL AND FRAUD, AND I THINK THE EVIDENCE WHEN YOUR HONOR IS CONSIDERING WHAT TYPE OF A REMITTITUR WOULD BE PROPER IN THIS CASE, WE WOULD ASK THAT ON THAT ISSUE THAT YOU WOULD CONSIDER HIS DELIBERATE AND WILFUL CONDUCT, FOR INSTANCE, IN NOT -- THAT IN INSTRUCTING THE DORMANS NOT TO PAY WEITZMAN THAT HE WOULDN'T DEAL WITH THE DORMANS WITH WEITZMAN PRESENT, THAT THE EVIDENCE IN THE CASE WAS THAT HE WOULD SUE LAWYERS THAT SUED HIM JUST IN ORDER TO GIVE THE LAWYERS TROUBLE, AND THAT HE REQUIRED THE DORMANS TO FIRE WEITZMAN AND BRAITERMAN BEFORE HE WOULD SETTLE THE CASE WITH THEM AT ALL.

THE COURT OF SPECIAL APPEALS AT 1065 SET FORTH THE STANDARDS TO BE CONSIDERED BY YOUR HONOR IN CONSIDERING REMITTITUR, AND THOSE WERE OUTLINED AS OUTRAGEOUS CONDUCT AND ACTUAL MALICE, THE PURPOSE OF WHICH WAS TO PUNISH THE WRONGDOER AND TEACH HIM NOT TO REPEAT WHAT HE HAD DONE IN THE PAST AND TO DETER OTHERS FROM SIMILAR CONDUCT.

THE COURT ALSO NOTED THAT THE AWARD MUST RELATE TO THE CULPABILITY EXHIBITED BY THE DEFENDANT AND THE PARTY'S ABILITY TO PAY. ANOTHER ISSUE WOULD BE THE CIVIL FINE AND THE ACTUAL LOSS.

THE COURT STATED THAT THE RESPONSIBILITY

OF THIS COURT WAS TO REVIEW THE VERDICT, APPLY THE SAME STANDARDS AND ASSUME THAT THE SIZE OF THE AWARD WILL ACCOMPLISH SOCIETY'S GOALS, AND THAT THE AMOUNT OF THE AWARD SHOULD BE REVIEWED FOR EXCESSIVENESS.

THEY WENT ON TO COMMENT AT 1066 THAT THERE WAS NO ISSUE WITH REGARD -- THAT THOSE FACTORS REALLY WERE -- SOME OF THOSE FACTORS WERE PUT BEFORE THE JURY ON THE INSTRUCTIONS, AND NOTED THAT THE TRIAL COURT UNDERTOOK AN APPROPRIATE REVIEW WITH REGARD TO THE INSTRUCTIONS AND -- THE REQUESTED INSTRUCTIONS AND THE INSTRUCTIONS GIVEN TO THE JURY, AND THAT THE COURT CONCLUDED THAT IN THIS INSTANCE, UNDER THE EVIDENCE, THAT YOU HAD TO CONSIDER THE CULPABILITY AND MR. FRAIDIN'S ABILITY TO PAY, AND -- AND THE COURT DID AT 1068, NOTE THE CONCLUSIONS OF THE JURY, AND CERTAINLY IT HELD THAT THEY -- THAT THE EVIDENCE, ESPECIALLY THE EVIDENCE GIVEN WITH REGARD TO HIS NET WORTH OF THREE -- IN EXCESS OF THREE MILLION DOLLARS TO WESTERN SURETY WAS EVIDENCE THAT THE -- THAT THE JURY SHOULD CONSIDER.

THE SIZE OR THE PROPORTIONALITY THE OF THE PUNITIVE DAMAGES AS OPPOSED TO THE COMPENSATORY DAMAGES, AS YOU KNOW, YOUR HONOR, HAS BEEN A SUBJECT OF DISCUSSION IN A NUMBER OF CASES SINCE HAYSLIP, BUT ACTUALLY THE LAW OF MARYLAND AT THIS POINT IS THAT -- THAT THERE -- THERE DOES NOT HAVE TO BE -- I AM TALKING ABOUT THE COURT OF APPEALS, THAT THEY

HAVE YET TO REALLY CHANGE THE LAW THAT WAS EXPOUNDED BEFORE THAT THERE NEED NOT BE A RELATIONSHIP BETWEEN PUNISHMENT DAMAGES AND THE AMOUNT OF COMPENSATORY DAMAGES, BUT WE FREELY ACKNOWLEDGE THAT THERE IS A LOT OF DISCUSSION ABOUT IT NOW DAYS, AND -- BUT THAT IS -- THAT IS JUST BUT ONE CONSIDERATION THAT THE COURT SHOULD ENTERTAIN IN LIGHT OF WHAT THE COURT OF SPECIAL APPEALS HAS SAID, AND WE WANT TO BRING THE LITIGATION TO AN END, HOPEFULLY, AND WE WOULD SUGGEST TO YOUR HONOR THAT WE ARE PREPARED TO ABIDE BY ANY REASONABLE REMITTITUR, BUT WE THINK, FOR THE RECORD, THAT IT IS ESSENTIAL FOR THE COURT TO INDICATE THAT -- THE MATTERS THAT IT HAS REVIEWED IN ARRIVING AT WHATEVER YOUR HONOR'S JUDGMENT SHOULD BE.

THE COURT: MR. FRAIDIN, ANY FURTHER COMMENT?

MR. FRAIDIN: YES, YOUR HONOR.

FIRST, I WOULD LIKE TO COMMENT ON THE READING OF THE OPINION OF THE COURT OF SPECIAL APPEALS.

I AM SURE YOUR HONOR DOESN'T NEED EITHER MR. O'DOHERTY OR MYSELF TO ARTICULATE WHAT THEY MEANT. IT'S CLEAR, IT'S WRITTEN IN THERE. HE HAS RECITED IN -- IN HIS DISCUSSION WITH THE COURT THE WAY HE READS IT. IT DOESN'T READ THAT WAY.

SECONDLY, HE HAS AGAIN -- WE'RE GOING ALL THE WAY BACK TO THE BEGINNING, HE CONTINUES TO USE THIS BASHING ALLEGATION THAT I HAD MISREPRESENTED TO THIS COURT MY NET WORTH.

THE STATEMENT OF WHICH HE SPEAKS OF WAS PRESENTED TO THIS COURT IN DECEMBER OF 1990. IT RELATES BACK TO JUNE 30, 1990. IT DOES NOT SHOW A NEGATIVE NET WORTH. AND AGAIN, HE HAS STATED IT THE WAY THAT IT SOUNDS GOOD FOR HIS SIDE. IT SHOWS TOTAL ASSETS OF SIX HUNDRED FIFTY-THREE THOUSAND, IT THEN ASSESSES WHAT WOULD HAPPEN TO MY NET WORTH AFTER THE COMPENSATORY DAMAGES WERE PAID, AFTER ALL OF THE OTHER LITIGATION WAS PAID AND HAS LEFT THE FIGURE BLANK FOR THE COURT TO ASSESS THEIR OWN DETERMINATIONS.

IN THIS STATEMENT IT HAS ALWAYS BEEN DISCLOSED THAT I HAVE RECEIVED ASSETS FROM THE ESTATE OF MY DECEASED MOTHER, A HUNDRED THOUSAND HAD BEEN RECEIVED PRIOR TO THIS JUNE 30TH STATEMENT, IT WAS DEPOSITED IN THE SECOND NATIONAL BANK. IT HAD BEEN DISCLOSED TO THE PLAINTIFFS. THAT'S HOW THEY ATTEMPTED TO ATTACH IT. AFTER THE JUNE 30TH STATEMENT, OTHER FUNDS CAME INTO MY POSSESSION. THEY WERE ALL ACCOUNTED FOR.

POSSIBLY MONEY WAS IMPROPERLY DEPOSITED IN A UNIFORM COMMERCIAL -- A UNIFORM GIFT TO MINORS ACT. I AM NOT SURE IF IT WAS OR NOT IMPROPERLY. I BELIEVE I HAVE A RIGHT, WITH MY FUNDS, TO DISTRIBUTE THEM TO MY CHILDREN THE WAY I SEE FIT.

HE'S HAD TWO YEARS TO PROVE THAT. HE'S NEVER GOTTEN ONE SHRED OF EVIDENCE TO SHOW THAT I HAVE -- DID DO ANYTHING WRONG. EVERYTHING WAS DISCLOSED TO THIS COURT.

YOUR HONOR ISSUED CERTAIN ORDERS RELYING ON THE REPRESENTATIONS OF THE PLAINTIFFS. THOSE REPRESENTATIONS WERE COUCHED TO MAKE ME LOOK LIKE A FUGITIVE.

THE BARCLAY TRANSACTION THAT MR. O'DOHERTY TALKS ABOUT, I FAXED TO MR. O'DOHERTY'S OFFICE A LETTER TELLING HIM THAT I INTENDED TO TRANSFER FUNDS TO BARCLAY'S NATIONAL BANK TO PURCHASE A BUSINESS IN THE BAHAMAS. ALBEIT HE MADE A BIG JOKE ABOUT IT IN COURT, FRAIDIN IS GOING TO BUY A RESTAURANT IN THE BAHAMAS.

MR. WEITZMAN WAS DOING EVERYTHING IN HIS POWER TO DESTROY ME, TO MAKE IT IMPOSSIBLE FOR ME TO DEFEND MYSELF. IF I WANTED TO HIDE SOMETHING, I SURELY WOULDN'T HAVE FAXED TO MR. O'DOHERTY'S OFFICE A LETTER TELLING HIM WHAT I WAS GOING TO DO. I DIDN'T DO IT. MR. O'DOHERTY TOOK A TRIP TO THE BAHAMAS TO CHECK ON IT. I MEAN THAT'S WHAT HE TOLD ME. WHETHER HE WENT THERE OR NOT OR WAS JUST MAKING A BIG JOKE ABOUT IT, I DON'T KNOW.

I NEVER SENT ONE CENT OUT OF THIS COUNTRY. I'VE CERTIFIED THAT UNDER OATH. I'VE CERTIFIED IT IN THE FEDERAL BANKRUPTCY COURT.

I HAVE PRESENTED TO THIS COURT EVERY DOLLAR THAT I HAVE. I HAVE GIVEN A LIST OF OVER TWENTY BANKS THAT MONEY WAS DEPOSITED IN, HOW IT WAS DEPOSITED. THERE'S BEEN A PAPER TRAIL OF CERTIFIED CHECKS. EVERYTHING HAS BEEN SUPPLIED TO THE FEDERAL EXAMINER UNDER THE DIRECTIVE OF THE BANKRUPTCY COURT. THEY JUST

KEEP MAKING THESE ALLEGATIONS, KEEP TRYING TO MAKE IT SEEM LIKE THAT FRAIDIN HAS DONE SOMETHING WRONG.

I DON'T THINK THAT'S EVEN A CONSIDERATION, THOUGH YOUR HONOR WILL MAKE THE FINAL DECISION. I BELIEVE THAT THE COURT OF SPECIAL APPEALS HAS SAID YOU HAVE TO CONSIDER HIS NET WORTH, YOU CAN'T DESTROY HIM, IF YOU ARE TO GRANT THE REMITTITUR, YOU HAVE TO GRANT IT COMMENSORATE WITH HIS NET WORTH.

THE COURT OF SPECIAL APPEALS DETERMINED THAT MALICE WAS IN EFFECT. THAT'S AN ISSUE THAT HE DOESN'T HAVE TO GO BACK INTO AGAIN. HE GOES BACK INTO IT AGAIN TO HELP RETRY AND INTIMIDATE.

ALL THE COURT HAS SAID IS PUNATIVES WERE IMPROPER, WE VACATE, JUDGE NOEL, DO WHAT IN YOUR DISCRETION YOU FEEL IS PROPER. IF IT IS NOT ACCEPTED BY THE APPELLANTS OR THE DEFENDANTS, THEN THE CASE WILL CONTINUE ON.

HE'S ADDRESSED EVERYTHING EXCEPT WHY HE DOESN'T WANT TO HEAR FROM THE FEDERAL EXAMINER AGAIN. I MEAN THIS IS AN INDEPENDENT AUDITOR ABOVE REPROACH APPOINTED BY THE FEDERAL BANKRUPTCY COURT. THIS MAN HAS LITERALLY DONE EVERYTHING HE COULD TO DESTROY ME.

THE COURT: WHAT HAPPENED TO THE BANKRUPTCY CASE?

MR. FRAIDIN: EXCUSE ME, YOUR HONOR.

THE COURT: WHAT HAPPENED TO THE BANKRUPTCY CASE?

MR. FRAIDIN: IT IS STILL ACTIVE. MY CHAPTER 11 IS STILL A VIABLE CHAPTER, AND MR. WEITZMAN, ABSENT OF COUNSEL, IS MAKING THESE SAME ALLEGATIONS INTO THAT COURT TRYING TO AVOID CERTAIN REFERENCES AS TO MORTGAGES THAT WERE TAKEN, KNOWING THAT THE DOCUMENTS WERE PRESENTED TO HIM, KNOWING THAT THOSE DOCUMENTS ARE VALID AND EXIST, HE HAS GOTTEN NOWHERE AT THIS POINT. HE HAS NOT WON AN ARGUMENT IN THAT COURT AS TO ANYTHING THAT -- THAT WOULD -- THAT WAS DONE WRONG.

HE HAS ALL MY DOCUMENTS. THEY WON'T RETURN THEM. THE EXAMINERS EVEN ASKED FOR THEM. HE'S HAVING PROBLEMS GETTING THEM BACK.

THOSE DOCUMENTS, ONCE I FILED BANKRUPTCY, SHOULD HAVE BEEN RETURNED SO THAT I CAN COMPLY WITH THE DIRECTIVES OF THE BANKRUPTCY COURT.

THERE IS NOTHING -- NOTHING THAT SUPPORTS WHAT HE'S DONE. HE HAS COLLECTED ONE HUNDRED THOUSAND DOLLARS ON THIS JUDGMENT. HE HAS NOT GIVEN US A CREDIT FOR IT. HE HAS NOT DISMISSED HIS LIEN AFTER THE COURT OF SPECIAL APPEALS SAID YOU HAVE A LIEN OF NINETY-ONE THOUSAND AND HE HAD ALREADY COLLECTED A HUNDRED.

THE COURT ALSO DIRECTED HIM, PURSUANT TO THE OPINION, TO PAY CERTAIN COURT COSTS THAT I WAS FORCED TO ADVANCE. MY COUNSEL AT THAT TIME, MR. STEELE, WROTE HIM, DEMANDING THE PAYMENT OF IT. HE SAYS I AM NOT PAYING IT, JUDGE NOEL IS GOING TO GIVE A REMITTITUR, WE'LL SEE WHAT HAPPENS. THAT'S A CAUSE FOR THE FUTURE,

HE HAS AN OBLIGATION, ESPECIALLY AS AN ATTORNEY, TO DISMISS THE GARNISHMENTS ONCE HE HAS BEEN PAID IN FULL. AT THIS JUNCTURE, HE HAS BEEN PAID IN FULL. I HAVE INCURRED ANOTHER LIABILITY BECAUSE OF HOW HE ACQUIRED THESE FUNDS, BUT HE'S STILL ACQUIRED THEM IN HIS SOLE CAPACITY UNREPRESENTED BY MR. O'DOHERTY.

OBVIOUSLY, IF MR. O'DOHERTY REPRESENTED HIM, MR. O'DOHERTY WOULD HAVE FOLLOWED THE RULES, AND WE HAVE TO LOOK AS TO WHY HE DISMISSED MR. O'DOHERTY AND CONTINUED ON IN PROPER PERSON AND NOW MR. O'DOHERTY IS BACK, AND TOMORROW MAYBE HE WILL BE GONE AGAIN. IT'S JUST GONE BACK AND FORTH FOUR OR FIVE TIMES, YOUR HONOR.

I KNOW WE HAVE ALL HAD PROBLEMS WITH ATTORNEYS IN THIS CASE, SO I'M MAYBE TREADING ON SOME THIN WATER, BUT I THINK THAT THE RULES CLEARLY SAY THAT WHEN YOU COLLECT A HUNDRED THOUSAND DOLLARS ON AN OUTSTANDING JUDGEMENT THAT THE COURT OF SPECIAL APPEALS SAYS IS NINETY-ONE THOUSAND DOLLARS, YOU'D BETTER DARN-SIGHTED REPORT IT TO THE COURT, RELEASE THE ATTACHMENTS AND RELEASE ALL THE LEVIES AND LIENS THAT YOU HAVE APPLIED TO PROPERTY. NOW HE DOESN'T DO IT, BECAUSE HE THINKS HE HAS A PRIORITY, IF HE KEEPS THOSE LIENS IN PLACE, AGAINST OTHER SECURED CREDITORS.

WELL, HE WILL ANSWER TO THAT IN ANOTHER FORUM, BUT I HAVEN'T HEARD ANYBODY GET UP AND DENY ANYTHING. I HAVEN'T HEARD ANYBODY SAY I DIDN'T GET THE MONEY. I TRIED TO ARTICULATE THIS

AT THE LAST HEARING HERE, BUT I DON'T BELIEVE THAT WAS THE PROPER TIME, BUT COUNSEL KNEW THAT HE HAS THAT MONEY. HE KNEW HE SHOULD HAVE DONE SOMETHING TO ALERT THE COURT. NOTHING WAS DONE.

THE COURT: MR. FRAIDIN, ONCE THAT IS PRESENTED TO ME PROPERLY, IF EVER, THEN IT WILL BE DEALT WITH ACCORDINGLY.

MR. FRAIDIN: THANK YOU, YOUR HONOR.

THE COURT: IT HAS TO BE BEFORE ME FOR ME TO TAKE ACTION.

MR. FRAIDIN: AGAIN, THE -- THE PLAINTIFFS IN THIS CASE PLACE ALL OF THEIR ATTACK ON TWO STATEMENTS GIVEN TO BONDING COMPANIES, NEVER GIVEN TO A COURT OF LAW, NEVER GIVEN TO A BANK TO BORROW MONEY, NEVER GIVEN -- THE STATEMENTS SPEAK FOR THEMSELVES.

THEY -- THEY HAVE BEEN DISECTED BY MR. WOLFSON. HE WOULD LIKE TO ADDRESS THEM, IF THE COURT WOULD HEAR IT.

THEY ALSO NEGLECT TO MENTION THE STATEMENT THAT WAS GIVEN IN THE ORIGINAL DORMAN TRIAL, A FINANCIAL STATEMENT THAT AFTER THE TRIAL WAS OVER, MR. WEITZMAN PROCEEDED TO HAVE A PERJURY INVESTIGATION CONDUCTED BY THE STATE'S ATTORNEY'S OFFICE IN BALTIMORE COUNTY. WHEN THE RESULTS CAME BACK NEGATIVE, HE DEEP-SIXED IT, YOU NEVER HEARD ANYTHING ABOUT IT, BUT IN THE TRIAL HERE WE GOT A LETTER FROM THE STATE'S ATTORNEY SAYING THAT HE HAD FULLY INVESTIGATED THE STATEMENTS, AND I WOULD PRODUCE THAT LETTER

AGAIN, IF YOUR HONOR WISHES TO SEE IT, AND BASICALLY CLEARED ME OF ANY WRONGDOINGS.

I TRIED TO GET THAT INTO EVIDENCE IN THE LOWER CASE, AND FOR WHATEVER THE REASONS, THE COURT FELT THAT IT WOULD BE A COURT EXHIBIT BUT WOULD NOT BE IN EVIDENCE.

I THINK IT -- I THINK IT SHOULD BE FAIRLY CLEAR TO THE COURT THAT IF A CREDITOR HAS A JUDGMENT DEBTOR AND HE CAN'T GET PAID AND HE'S MAKING ALL OF THESE ALLEGATIONS ABOUT HIDING AND TRANSFERRING AND THE DEBTOR WANTS TO PUT EXAMINERS IN TO PUT HIM UNDER THE MICROSCOPE, WHY IN THE WORLD WOULD YOU OBJECT, UNLESS YOU KNEW WHAT THE RESULTS WOULD BE AND THEN YOU KNEW THAT THOSE RESULTS WOULD EFFECTIVELY SKUTTLE ANY ATTEMPT BY YOU TO SHOW THAT FRAIDIN IS A FRAUD, IS NOT CREDIBLE OR ANYTHING ELSE.

HE WAS WAITING FOR THIS DAY. HE HAD POSSIBILITIES OF WHAT THE COURT OF SPECIAL APPEALS WOULD DO. WE ALL HAD INSIGHTS AS TO WHAT THEIR OPINIONS WOULD BE, AND HE WANTED TO BE IN A POSITION TO HAVE ME UNABLE TO DEFEND MYSELF, DISMISS THE APPEAL, SETTLE WITH ME, LET ME PUT YOU INTO A STATE BANKRUPTCY, ALL OF THESE DIFFERENT ALLEGATIONS. WE COULD GO ON FOR HOURS, BOTH OF US. YOUR HONOR HAS HEARD NINE MONTHS OF THIS AGGRAVATION, AND I AM SURE HE DOESN'T WANT TO HEAR ANY MORE.

I WOULD BASICALLY SAY THAT I HAVE A WITNESS HERE THAT I WOULD LIKE TO TAKE THE STAND. I ALSO BELIEVE THAT THE COURT OF SPECIAL

APPEALS' OPINION CAN BE READ BY YOUR HONOR AND YOUR HONOR CAN MAKE HIS OWN DECISION AS TO WHAT IT SAYS.

I READ MR. WEITZMAN'S BRIEF. WITH ALL DUE RESPECT, IT SOUNDED LIKE A BUNCH OF DOUBLE-TALK. IT CITED CASES THAT WEREN'T ON POINT, WENT INTO ALL TYPES OF THEORIES ON WHY A JUDGE WHO HAS THE SOLE DISCRETION OF GRANTING A REMITTITUR SHOULD DO IT THE WAY HE WANTS IT DONE.

OTHER THAN THAT, I COULDN'T SUBMIT A LEGAL BRIEF ON HOW YOUR HONOR SHOULD ADDRESS A REMITTITUR, BECAUSE I BELIEVE THAT'S WITHIN YOUR SOLE DISCRETION. I DON'T BELIEVE THERE IS CASE LAW THAT SAYS YOU MUST DO THIS, YOU MUST DO THAT. I THINK WHAT YOU DO IS, AGAIN, WITH ALL DUE RESPECT, YOU TAKE INTO CONSIDERATION WHAT THE COURT OF APPEALS HAS DONE WITH PUNITIVE DAMAGE AWARDS IN THIS STATE.

IN THEIR OPINION, THEY SAY THAT A HUNDRED THOUSAND DOLLARS -- I WOULD LIKE TO READ THAT INTO THE RECORD TOO, YOUR HONOR.

PAGE 44 OF THE SLIP OPINION, STARTING AT THE TOP, "ALTHOUGH" E-S-C-H-E---

THE COURT: ESCHEWING.

MR. FRAIDIN: "--ESCHEWING ANY DESIRE TO ENGAGE IN A PROPORTIONAL REALITY OF PUNITIVE DAMAGE AWARDS, IN DECIDING WHETHER THE AWARD IN ALEXANDER COMPORTED WITH DUE PROCESS, WE DID COMPARE IT WITH OTHER AWARDS.

"WE NOTED THAT THE LARGEST AWARD OF

WHICH WE ARE AWARE RENDERED BY A MARYLAND COURT WAS SEVEN MILLION, FIVE HUNDRED THOUSAND DOLLARS IN POTOMAC ELECTRIC VS. SMITH 79 MARYLAND APPELLATE 591, 1989.

"UTILITY COMPANY PERMITTED A HIGH VOLTAGE WIRE TO REMAIN DOWN IN AN AREA FREQUENTED BY CHILDREN WHICH SUBSEQUENTLY CAUSED THE ELECTRICUTION OF A CHILD.

"THE NEXT HIGHEST AWARD ALLOWED TO STAND WAS NINE HUNDRED AND TEN THOUSAND AGAINST EXXON CORPORATION," EXXON V. YAREMA 69 MARYLAND APPELLATE 124 1986.

THAT WAS AN ACTION AGAINST THE CORPORATION WHOSE STORAGE TANKS LEAKED GASOLINE THAT INTERFERED WITH LANDOWNER'S PROPERTY RIGHTS.

"WE ALSO COMMENTED THAT OTHER THAN THESE AWARDS, MOST HAVE BEEN WELL UNDER A HUNDRED THOUSAND DOLLARS," 88 MARYLAND APPELLATE AT 720.

"WHAT DISTURBS US ABOUT THE AWARD IN THIS CASE SUB JUDICE IS NOT THE PARTICULAR AMOUNT OF THE AWARD BUT ITS PROPORTION TO APPELLATE'S WEALTH.

"EVIDENCE REGARDING APPELLATE'S NET WORTH WAS CONTROVERTED. INFORMATION PREPARED BY FRAIDIN FOR LITIGATION PURPOSES PLACED HIS PERSONAL WEALTH AT TWO HUNDRED FIFTY THOUSAND, AND THE CORPORATIONS IN THE RED AS OF JUNE, 1990.

"FRAIDIN'S SWORN APPLICATION TO THE WESTERN SURETY COMPANY INTRODUCED BY

BRAITERMAN P.A. AND WEITZMAN SHOWED FRAIDIN'S NET WORTH, INCLUDING CORPORATE ASSETS, TO BE OVER THREE MILLION AS OF JUNE, 1985."

OTHER THAN THAT, I THINK THE COURT HAS BASICALLY LEFT IT UP TO YOU, YOUR HONOR.

THANK YOU.

MR. O'DOHERTY: MAY I JUST SAY ONE THING? I DON'T WANT TO GET BACK INVOLVED IN THAT OTHER BUSINESS, BUT YOUR QUESTION WITH REGARD TO THE STATUS OF THE BANKRUPTCY CASE, IN THAT CASE, THERE ARE TWO ADVERSARIAL PROCEEDINGS RIGHT NOW. THERE HAS BEEN NO HEARING, AND WE'RE TRYING TO GET RECORDS OVER THERE FROM MR. FRAIDIN, BUT OVER THERE, THEIR ADVERSERIAL PROCEEDINGS ARE WITH REGARD TO FRAUDULENT TRANSFERS AS WELL.

MR. FRAIDIN: MR. O'DOHERTY DOES NOT REPRESENT THE APPELLANTS -- THE PLAINTIFFS IN THIS CASE IN THE BANKRUPTCY COURT, AND HIS REPRESENTATIONS ARE NOT CLEAR. MR. WEITZMAN JUST WITHIN, I BELIEVE, THE LAST WEEK FILED ANOTHER ADVERSARY PROCEEDING TRYING TO AVOID CERTAIN PREFERENCES. THAT'S GOING TO FALL ON DEAF EARS ALSO BECAUSE HE'S MISREPRESENTED TO THE BANKRUPTCY COURT FACTS THAT ARE UNDISPUTEABLE.

THE BANKRUPTCY EXAMINER EXAMINED THAT SUIT ALSO, AND I WOULD LIKE TO COMMENT ON IT, IF THE COURT IS INTERESTED. I DON'T KNOW IF IT IS GERMANE TO WHAT IS GOING ON HERE, BUT AGAIN, I HAVEN'T HEARD THEM SAY WHY HE SHOULD NOT TAKE THE STAND.

THE COURT: IS EVERYONE FINISHED?

MR. O'DOHERTY: YES, SIR.

MR. FRAIDIN: YES, SIR,

THE COURT: MR. FRAIDIN HAD MADE A COMMENT WITH RESPECT TO ALLEGING THAT THE PLAINTIFFS IN THIS CASE ARE NOT INTERESTED IN WHAT THE INDEPENDENT BANKRUPTCY INVESTIGATOR WOULD HAVE TO SAY, BECAUSE IT WOULD BE SUPPORTIVE OF HIS POSITION. I DON'T KNOW THAT THAT'S NECESSARILY ACCURATE, BECAUSE MR. FRAIDIN, I BELIEVE THAT THERE IS A BODY OF LAW THAT DOES GOVERN SITUATIONS SUCH AS THIS.

WE HAD A VERY LENGTHY, INVOLVED TRIAL IN THIS CASE, AND I DON'T THINK IT PROPER TO GO BEYOND THE EVIDENCE THAT WAS ADDUCED AT THAT TRIAL. ALL OF THIS -- AND I GUESS YOU GENTLEMEN HAVE BEEN GOING AT IT FOR WELL OVER AN HOUR, CLOSE TO AN HOUR AND A HALF, WAS IN RESPONSE TO A SIMPLE QUESTION OF MINE, AND THAT QUESTION WAS WHETHER OR NOT ADDITIONAL EVIDENCE COULD BE TAKEN AT A REMITTITUR HEARING.

I WANTED AUTHORITY, AND -- BECAUSE I WAS OF THE OPINION THAT ANY DECISION I MADE REGARDING THE REMITTITUR WOULD HAVE TO BE COUCHED IN TERMS OF WHAT OCCURRED DURING THE TRIAL.

I WOULD BE MOST INTERESTED IN HEARING WHAT THE INVESTIGATOR WOULD TESTIFY TO, BUT I DON'T FEEL IT IS PROPER.

ANY CONDUCT OF YOURS, MR. FRAIDIN, WITH RESPECT TO MR. WEITZMAN AND MR. BRAITERMAN IN

THIS CASE AS TO THE ISSUE OF MALICE HAS ALREADY BEEN RESOLVED. THE JURY MADE A FINDING, THE COURT OF SPECIAL APPEALS HAS AFFIRMED IT.

THE JURY ALSO HEARD CONFLICTING CONTROVERTED EVIDENCE REGARDING YOUR NET WORTH.

THE JURY SEEMED TO FEEL THAT THERE WAS -- THAT YOU WERE WORTH SUBSTANTIALLY MORE THAN THE EVIDENCE YOU PRODUCED.

IT IS -- WHEN I CALCULATED THE COMPENSATORY AWARD, I BELIEVE IT CAME OUT TO THE PENNY OF WHAT THE ATTORNEY FEE WOULD HAVE BEEN IN THE UNDERLYING CASE, AND I THINK THE THREE MILLION DOLLAR FIGURE WAS PROBABLY A SAME OR SIMILAR CALCULATION BY THE JURY THAT CAME TO THE AMOUNT OF YOUR TESTIFIED TO WORTH OR ONE BIT OF EVIDENCE THAT DID, IN FACT, COME IN.

SO I AM NOT -- I AM OF THE OPINION, AND I DO FIND THAT IN A REMITTITUR HEARING I AM BOUND BY WHAT OCCURRED IN THE TRIAL, AND I AM NOT PERMITTED TO GO BEYOND THAT, SO THAT IS WHAT I WILL LIMIT MY FINDING TO, THE EVIDENCE THAT WAS ADDUCED DURING THE VERY LENGTHY AND INTERESTING TRIAL THAT WE HAD HERE THAT DID LAST, I GUESS, A TOTAL OF THIRTEEN WEEKS OR SO, CONSIDERING BOTH SETS OF HEARINGS.

NOW, THE QUESTION IS HOW DO WE PROCEED.

THE COURT OF SPECIAL APPEALS, OBVIOUSLY, DIDN'T WANT TO TACKLE THIS AND DETERMINE THE AMOUNT TO BE REMITTED, AND NOBODY, UNDER ANY CIRCUMSTANCES, WANTS TO TRY THIS AGAIN.

SO THE TWO POSSIBILITIES THE COURT OF SPECIAL APPEALS SUGGESTED -- TWO OF THE THREE I KNOW WE'RE NOT GOING TO PROCEED WITH, THE THIRD BEING THE REMITTITUR HEARING.

NOW, IF COUNSEL -- IF MR. FRAIDIN AND MR. O'DOHERTY WOULD LIKE TO MAKE ARGUMENTS COUCHED STRICTLY IN TERMS OF THE EVIDENCE THAT WAS BROUGHT FORTH IN THE LENGTHY TRIAL FOR ME TO CONSIDER FOR THE REMITTITUR, I WILL DO SO.

NOW, DURING THE TRIAL, AS THE COURT HAS POINTED OUT, THE EVIDENCE CONCERNING YOUR NET WORTH WENT ACROSS THE SPECTRUM. AS A MATTER OF FACT, THE TESTIMONY WAS THAT THE CORPORATIONS WERE OPERATING IN THE RED.

NOW, I AM WILLING TO LISTEN TO ARGUMENTS BASED ON THE EVIDENCE THAT WAS, IN FACT, ADDUCED AT TRIAL, OR I CAN MAKE MY RULING HAVING SAT THROUGH ALMOST TWO TRIALS INVOLVING THIS SET OF CIRCUMSTANCES. IT IS YOUR DECISION.

MR. FRAIDIN?

MR. FRAIDIN: I'D LIKE ONE GUIDELINE FROM YOU. IS IT YOUR POSITION THAT A PUNITIVE DAMAGE AWARD SHOULD BE CONSIDERED AND EVALUATED AS TO AN ALLEGED NET WORTH SEVEN YEARS BEFORE THE FACT, OR AT THE TIME THAT THE PUNITIVE DAMAGE TRIAL TAKES PLACE?

THE COURT: MR. FRAIDIN, AS I INDICATED, MY DECISION WILL BE BASED UPON WHAT THE EVIDENCE WAS THAT WAS PRESENTED TO THE JURY.

MR. FRAIDIN: OKAY, THEN I WOULD SAY ONE THING, YOUR HONOR, I DO NOT BELIEVE THAT THE

JURY ARTICULATED AS TO HOW THEY ARRIVED AT THREE MILLION.

THE COURT: AND YOU ARE CORRECT.

MR. FRAIDIN: I BELIEVE THE JURY -- SINCE THEIR VERDICT ON COMPENSATORY WAS TO THE PENNY OF WHAT THE PRIOR JUDGMENT WAS IN THE LOWER COURT, IT WOULD NOT BE A QUANTUM LEAP TO THINK THAT THEY DECIDED THAT THAT JUDGMENT WOULD HAVE BEEN WON OR WHATEVER THEY DECIDED AND GRANTED IT.

MR. O'DOHERTY SAID TO THE JURY GIVE ME THREE MILLION DOLLARS.

THE COURT: I BELIEVE MR. O'DOHERTY ASKED FOR FIVE IN HIS CLOSING ARGUMENT.

MR. FRAIDIN: WELL, I WON'T ARGUE WITH YOUR HONOR. I AM NOT SURE, BUT THE JURY CAME UP WITH WHAT THEY CAME UP WITH, AND I GUESS NO ONE KNOWS HOW THEY CAME UP WITH IT.

I DID NOT INTRODUCE ANY STATEMENTS THAT SHOW A NET WORTH OF THREE MILLION. THEY WERE INTRODUCED BY THE PLAINTIFFS IN THIS CASE, THEY WERE VEHEMENTLY OBJECTED TO. THERE WAS MANY HOURS OF TESTIMONY EXPLAINING THESE, REFUTING THEM, SHOWING ALL OF THE DIFFERENT THINGS. YOUR HONOR SAT THROUGH IT TO, I GUESS, NAUSEATING ALMOST.

MY STATEMENTS THAT WERE INTRODUCED AND THAT ARE IN THIS CASE GO TO 1984, I BELIEVE, THE TRIAL DATE OF THE ORIGINAL DORMAN CASE. IT SHOWS WHAT IT SHOWS. MY STATEMENT OF JUNE, '90 -- JUNE 30, 1990 WAS INTRODUCED BY ME. HE WAS QUESTIONED ON IT EXTENSIVELY. A LIST OF

CREDITORS, OTHER LAW SUITS AND EVERYTHING ELSE IS THERE.

ALL OF THE EVIDENCE IS IN BEFORE THE COURT.

NOW, IF YOUR HONOR IS ASKING FOR US AT THIS JUNCTURE -- OBVIOUSLY, I PRESUME YOU ARE NOT GOING TO GIVE YOUR RULING TODAY WITHOUT, YOU KNOW, READING AND TAKING INTO CONSIDERATION, ASKING FOR US TO BREAK DOWN THINGS AND TRY TO CLARIFY IT, THEY WILL CLARIFY IT TO WHAT THEY WANT TO SHOW AND I WILL CLARIFY IT TO WHAT THE DOCUMENTATION SHOWS.

OTHER THAN THAT, I THINK A KEY QUESTION -- AND AGAIN, YOUR HONOR IS FAR MORE EQUIPT TO DETERMINE WHAT THE COURT OF SPECIAL APPEALS SAYS THAN WHAT I SAY, BUT IT WOULD SEEM TO ME THAT IT WOULD BE IMPOSSIBLE TO COMPORT WITH THEIR DIRECTION IN NOT PUNISHING THE DEFENDANT IN EXCESS OF HIS NET WORTH OR HIS ABILITY TO PAY IF YOU ARE GOING TO USE ANY DATE OTHER THAN THE CURRENT DATE.

WE SURELY COULDN'T GIVE A DAMAGE AWARD COMMENSURATE WITH WHAT MIGHT OCCUR IN FOUR YEARS, BECAUSE THE DEFENDANTS ARE WORKING ON AN INVENTION THAT IF IT IS PERFECTED THEY WILL BE ABLE TO SELL IT TO GENERAL MOTORS AND GET THIRTY MILLION.

THE SAME WOULD BE WE COULD NOT GO ON THE ALLEGED NET WORTH OF A DEFENDANT SEVEN YEARS PRIOR. I THINK THAT SEVEN YEAR DIFFERENCE IS CRITICAL TO THIS CASE. NORMAL CASES INVOLVING PUNITIVE DAMAGES ARE GOVERNED BY

THE NET WORTH AT THE TIME THE JURY CONSIDERS THE PUNITIVE DAMAGES.

THERE IS NO EVIDENCE IN THIS CASE THAT SHOWS THAT FRAIDIN'S NET WORTH IN 1990, OR IS ANYWHERE NEAR WHAT THE PLAINTIFFS WOULD HAVE THE COURT BELIEVE, AND THEY HAVE HAD TWO YEARS IN WHICH TO SUBSTANTIATE IT TO THIS COURT.

I GUARANTEE YOU, YOUR HONOR, IF THEY COULD HAVE PROVED THAT I LIED AND THEY COULD SUBSTANTIATE WHAT THEY DID, YOU'D HEAR A COMPLETELY DIFFERENT ARGUMENT, WE WANT NEW EVIDENCE PRESENTED, WE WANT THE COURT TO HEAR ALL THE NEW EVIDENCE, BECAUSE WE HAVE A BANK THAT FRAIDIN HAS TWO MILLION DOLLARS IN, OR WE HAVE SUBSTANTIATION FROM A FEDERAL EXAMINER THAT FRAIDIN LIED, THAT HERE IS HIS MONEY. YOU WOULDN'T HEAR THE ARGUMENT THAT YOU ARE HEARING TODAY, DON'T LOOK AT ANYTHING ELSE NEW, DON'T CONSIDER ANYTHING ELSE, AND I THINK THE COURT IN THEIR DISCRETION, HAS TO CONSIDER THE CREDIBILITY IN DETERMINING ANY FACTOR.

I AM HERE CUT OPEN. I HAVE BEEN DISECTED, I HAVE BEEN IN BANKRUPTCY FOR TWO YEARS. THE FACTS ARE THERE, AND THAT'S BASICALLY WHAT I WOULD SAY, YOUR HONOR.

THANK YOU.

MR. O'DOHERTY: I SHALL BE BRIEF ON THE POINT, BUT AGAIN, JUST TO REITERATE WHAT MR. FRAIDIN HAS SAID, WHAT THE COURT OF SPECIAL APPEALS HAS SAID IS, QUOTE, WHAT DISTURBS US ABOUT THE AWARD IN THE CASE SUBJUDICE IS NOT

THE PARTICULAR AMOUNT OF THE AWARD, BUT ITS PROPORTION TO THE APPELLANT'S WEALTH.

NOW, WITH REGARD TO THE ISSUES OF WHAT WAS BEFORE THE JURY, I BELIEVE, IF I AM INTERPRETING WHAT YOUR HONOR IS REQUESTING OF US, IS WHAT WAS BEFORE THE JURY WAS THE -- THE -- THE HIGH DEGREE OF MALICE. THERE WAS EVIDENCE OF A HIGH DEGREE OF MALICE, AND THAT THAT MALICE WAS A PERSONAL MALICE AGAINST WEITZMAN AND BRAITERMAN.

AND IN EFFECT, WE HAVE -- I HAVE ALREADY COMMENTED BEFORE WITH REGARD TO SUBORNING OF -- EXCUSE ME, THE FABRICATION OF EVIDENCE THAT THE JURY HEARD WITH REGARD TO WEITZMAN AND FRAIDIN. THEY HEARD THE SUBORNED PERJURY THAT WENT -- OR THE ACCUSATIONS OF SUBORNING PERJURY BEFORE JUDGE HINKEL AND IGNORED IT.

THEY CONSIDERED THE DEFAMATORY STATEMENTS MADE ABOUT -- MOSTLY ABOUT MR. WEITZMAN OF HIM HAVING RUNNERS AND THAT HE WAS A DRUG ADDICT, THAT HE WAS A VIOLENT PERSON, AND HIS -- HIS MALICE AND IN LIGHT OF WHAT HE HAD DONE IN INSISTING ON AN APOLOGY FROM BRAITERMAN TO AVOID -- TO AVOID HIM TAKING ACTIONS AGAINST MR. BRAITERMAN, BUT WHAT WE ARE DEALING WITH HERE, AND WHAT WE ARE ASKING THE JURY TO CONSIDER, IN LIGHT OF THOSE CITATIONS OF AUTHORITY BY THE COURT OF SPECIAL APPEALS CONCERNING WHAT WAS DONE IN, FOR INSTANCE, THE B.G. & E. -- THE POTOMAC EDISON CASE OF SEVEN MILLION, AND ANOTHER CASE OF LEAKING GASOLINE, WHAT THIS CASE INVOLVED IS

MR. FRAIDIN'S INTENTIONAL CONDUCT IN POLLUTING THE ENTIRE JUDICIAL SYSTEM, AND WE HAVE WITNESSED AND THE JURY WITNESSED WHAT HE DID TO ACCOMPLISH THAT RESULT.

THE CASES THAT THE COURT OF APPEALS MENTIONED ARE CASES INVOLVING NEGLIGENCE, AND SINCE ZENOBIA, THE POINT THAT I HAVE MADE ON THESE PUNITIVE DAMAGES CASES -- THE SEVEN MILLION DOLLARS CASE AGAINST POTOMAC EDISON, THE PLAINTIFFS IN THAT CASE COULDN'T GET THE COST OF A FUNERAL WREATH TODAY, BECAUSE THE IMPLIED MALICE STANDARD WAS WIPED OUT BY THE COURT OF APPEALS.

BUT WHAT WE HAVE HERE AND WHAT WE ARE ASKING THIS COURT TO CONSIDER IS THE HIGH DEGREE OF MALICE, AND WHAT MR. FRAIDIN DID AND HOW HE SET UPON THIS MISSION OF CORRUPTING THE ENTIRE JUDICIAL SYSTEM WITH -- WHOSE RESPONSIBILITY IT IS TO LITIGATE ISSUES FAIRLY AND HONESTLY AND JUSTLY BETWEEN PARTIES THAT COME BEFORE THE COURT.

NOW, WITH REGARD TO JUDGE BISHOP'S STATEMENTS IN THAT OPINION ABOUT WE CAN'T BANKRUPT MR. FRAIDIN, YOU KNOW, I HAVE A LOT OF RESPECT FOR JUDGE BISHOP, AND HE CERTAINLY IS A SCHOLAR AND A GENTLEMAN. THE JUDGES THAT WERE WITH HIM WHEN THEY HEARD THIS CASE ON APPEAL ARE ALL FAR MORE EDUCATED THAN I AM, BUT WHEN YOU REALLY LOOK AT THIS ISSUE THAT YOU CAN'T BANKRUPT HIM, BANKRUPT HIM FROM WHAT? THE ISSUE HERE IS TO PUNISH HIM AND TO DETER OTHERS FROM SIMILAR CONDUCT.

WE KNOW HIS BUSINESS, AND WHAT THE COURT HAS REALLY SAID IS THAT HE'S GOT TO HAVE MONEY LEFT TO SUPPLY THE KIND OF BUSINESS THAT HE HAS BEEN ENGAGED IN, WHICH IS TO LOAN MONEY AT THESE OUTRAGEOUS RATES.

MR. FRAIDIN: I AM GOING TO OBJECT.

MR. O'DOHERTY: I WILL STOP ON THAT.

MR. FRAIDIN: THIS IS TOTALLY IMPROPER.

THE COURT: ONE MOMENT.

GENTLEMEN. GENTLEMEN.

THE OBJECTION IS SUSTAINED.

MR. O'DOHERTY: YOUR HONOR, I WOULD JUST SAY IN CONCLUSION THAT -- THAT THE COURT IS CERTAINLY CORRECT THAT WE DON'T WISH TO -- TO RELITIGATE THIS MATTER. WE THINK IT SHOULD BE BROUGHT TO AN END, AND WE, IF YOU ARE LOOKING FOR WHAT WE REALLY FEEL WITH REGARD TO A REMITTITUR, IF I UNDERSTAND, IF THAT'S ONE OF THE QUESTIONS, RELUCTANTLY WE WOULD -- WE WOULD CERTAINLY FEEL THAT IF THE CASE WAS REMITTED TO TWO MILLION DOLLARS, WE WOULD BE SATISFIED WITH THAT.

THE COURT: GENTLEMEN, GIVE ME A MOMENT.

MR. FRAIDIN MAKES A VERY LEGITIMATE POINT WHEN HE RAISES THE ISSUE OF AT WHAT POINT IN TIME SHOULD A DEFENDANT'S WORTH BE DETERMINED FOR PURPOSES OF ASSESSING PUNITIVE DAMAGES.

ALSO, I POINT OUT IN THIS CASE THAT THE EVIDENCE REFLECTED, WITH RESPECT TO MR. FRAIDIN, THAT WHEN IT WAS CONVENIENT FOR MR. FRAIDIN TO HAVE A HIGH NET WORTH, THERE WAS A

HIGH NET WORTH. WHEN IT WAS CONVENIENT FOR MR* FRAIDIN TO HAVE A LOW NET WORTH, HE WAS ABLE TO PRODUCE DOCUMENTS SHOWING A LOW NET WORTH, AND THEREFORE, IT WAS UP TO THAT GROUP OF TWELVE PEOPLE THAT ULTIMATELY SAT IN JUDGMENT TO DETERMINE WHAT THEY FELT THE NET WORTH WOULD BE, AND AT WHAT POINT IN TIME.

BECAUSE OF THE CONFLICTING EVIDENCE WE HAD -- AND WHEN YOU CONSIDER A JURY, THEY ARE THE TRIER OF THE FACT. HAD I BEEN SITTING AS THE TRIER OF FACT, I WOULD HAVE HAD TO HAVE MADE THE DECISION, BUT THE JURY WAS SITTING AS THE TRIER OF FACT, AND THEY DID IN FACT DETERMINE A NET WORTH--

STRIKE THAT.

THEY DID IN FACT ASSESS A PUNITIVE DAMAGE.

UNFORTUNATELY, AS THE COURT OF SPECIAL APPEALS POINTED OUT, I DIDN'T GIVE THE JURY COMPLETE INSTRUCTIONS, BUT BEAR IN MIND, THIS IS SOMEWHAT OF A NOVEL QUESTION IN MARYLAND, AND ACCORDING TO JUDGE BISHOP, AS I UNDERSTAND, THIS MAY HAVE BEEN THE FIRST CASE TO REALLY ADDRESS DIRECTLY THE DUE PROCESS ISSUE IN MARYLAND.

SO AS TO WHETHER OR NOT WE MUST AFFIX A POINT IN TIME TO THEN DETERMINE WHAT MR. FRAIDIN'S NET WORTH WOULD BE, WE DO NOT HAVE ABSOLUTE DIRECTION, BUT IT IS A MATTER FOR LEGITIMATE CONCERN, BUT THE EVIDENCE IN THE TRIAL RAN THE GAMUT CONCERNING MR. FRAIDIN'S NET WORTH IN TERMS OF THE AMOUNT AND TIME. WE HEARD EVIDENCE RANGING FROM 1981 THROUGH

SEVERAL YEARS. THERE WERE NO TAX RETURNS FILED BY MR. FRAIDIN FOR '88, '89 AND '90, WHICH WOULD HAVE GIVEN US MORE DIRECTION.

SO THE JURY MADE THE BEST DECISION THEY COULD FROM ALL OF THE EVIDENCE, BUT I POINT OUT WHEN IT WAS CONVENIENT FOR MR. FRAIDIN TO HAVE A LOW NET WORTH HE COULD PRODUCE DOCUMENTATION TO THAT EFFECT, AND WHEN IT WAS CONVENIENT FOR MR. FRAIDIN TO HAVE A SUBSTANTIAL NET WORTH, HE COULD PRODUCE DOCUMENTATION TO THAT EFFECT. SO I IMAGINE THAT THE JURY HAD A RATHER DIFFICULT DECISION TO MAKE.

I DIFFER FROM MR. O'DOHERTY WHEN HE SUGGESTS THAT THE DEGREE OF MALICE SHOULD BE CONSIDERED AS A FACTOR IN DETERMINING THE AMOUNT IN ORDER TO BE REMITTED.

THE COURT OF SPECIAL APPEALS REMANDED THE CASE. THEY FOUND THAT MALICE DID, IN FACT, OCCUR. THEY DID NOT GIVE ANY DIRECTIONS WITH RESPECT TO DEGREES OF MALICE. THAT DECISION HAD ALREADY BEEN RESOLVED BY THE JURY AND THE COURT, BUT THE COURT DID SEND IT BACK ON THE ISSUE OF CONSIDERING AND RESOLVING THE ISSUE OF PUNITIVES SUCH THAT IT WOULD NOT BE A VIOLATION OF MR. FRAIDIN'S NET WORTH.

WHAT I AM GOING TO DO IS REQUIRE THE PLAINTIFFS TO REMIT ONE HALF THE PUNITIVE DAMAGES WITH RESPECT TO MR. WEITZMAN AND ONE HALF THE PUNITIVE DAMAGES WITH RESPECT TO MR. BRAITERMAN, SHELDON BRAITERMAN, P.A.

THE PUNITIVE DAMAGES ASSESSED AGAINST

MR. FRAIDIN IN THE CASE OF -- INVOLVING MR. BRAITERMAN OR BRAITERMAN, P.A. WILL BE TWO HUNDRED FIFTY THOUSAND DOLLARS.

WHAT WAS THE TOTAL AMOUNT AS TO MR. WEITZMAN?

MR. FRAIDIN: TWO AND A HALF MILLION, YOUR HONOR.

THE COURT: WHAT'S HALF OF THAT, MR. FRAIDIN?

MR. FRAIDIN: ONE MILLION, ONE HUNDRED TWENTY-FIVE THOUSAND.

MR. O'DOHERTY: ONE MILLION, TWO HUNDRED FIFTY --

THE COURT: YOU ARE CORRECT, ONE MILLION, TWO HUNDRED FIFTY THOUSAND.

GENTLEMEN, THAT IS WHAT THE PUNITIVE DAMAGES WILL BE ASSESSED AT.

MR. O'DOHERTY: SIR, WE HAVE -- WE HAVE ORDERS PREPARED, AND I CAN TELL YOU RIGHT NOW THEY JUST HAVE TO FILL IN THE BLANKS, BUT WE ARE CONSENTING TO THE REMITTITUR AT THIS TIME.

THE COURT: FILL IN THE BLANKS, PLEASE, AND THEN I WILL SIGN THE ORDERS.

MR. FRAIDIN: I WISH TO MAKE SURE THAT -- MAYBE I SHOULD HAVE DONE IT PRIOR TO YOU GIVING THE VERDICT, BUT TO MAKE SURE THAT CERTAIN DOCUMENTED EVIDENCE THAT IS IN THE CASE REMAINS IN THIS PARTICULAR HEARING, AND I THINK IT ALL REMAINS IN IT BECAUSE --

THE COURT: IT'S STILL OPEN.

MR. FRAIDIN: YES, I WOULD HOPE SO.

MAY I, FOR THE RECORD, MAKE SURE THAT

CERTAIN DOCUMENTS -- I WANT TO MAKE SURE PLAINTIFF'S PRIOR COUNSEL NEVETT STEELE'S MOTION FOR NEW TRIAL AND REMITTITUR VERDICT --

THE COURT: JUDGMENT N.O.V.

MR. FRAIDIN: AND COUNSEL EUGENE HETTLEMAN'S MOTIONS ARE STILL BEFORE THE COURT AS EXHIBITS IN THE REMITTITUR HEARING, AND THAT THE OTHER DOCUMENTS PRESENTED DURING THE PUNITIVE DAMAGE PHASE OF THE TRIAL, SPECIFICALLY THE FINANCIAL STATEMENT OF JACOB FRAIDIN, JUNE 30, 1990, IS AN EXHIBIT AND THE PRIOR STATEMENT OF JUNE 30, 1985 IS AN EXHIBIT.

THE COURT: MR. FRAIDIN, I DON'T KNOW THAT THE CLERK'S OFFICE EVEN HAS THE FILE BACK FROM ANNAPOLIS AS OF YET, BUT ALL OF THE EVIDENCE THAT WAS PRODUCED IS GOING TO BE CONSIDERED IF THIS DECISION IS APPEALED.

MR. FRAIDIN, IF THERE -- IF THE EVIDENCE OR ANY OF IT IS MISSING, THEN WE WILL TAKE THE PROPER COURSE.

MR. FRAIDIN: OKAY, YOUR HONOR.

I WOULD ASSUME THAT AS OF TODAY A -- A FINAL APPEALABLE JUDGMENT IS BEING ENTERED IN THIS CASE.

THE COURT: YES.

MR. FRAIDIN: IS THAT CORRECT, YOUR HONOR?

THE COURT: YES.

MR. FRAIDIN: THANK YOU.

MR. O'DOHERTY: SIR, WE ARE HANDING UP FIRST THE ORDER GRANTING THE CONDITIONAL REMITTITUR SETTING FORTH THE SIGNATURES THAT YOUR HONOR HAS JUST ENUNCIATED, AND WE WOULD

ASK THAT THE ORDER BE SIGNED, PLEASE.

WE NEXT SUBMIT THE PLAINTIFF'S CONSENT TO THE REMITTITUR EXECUTED HERE TODAY.

MR. FRAIDIN: I WOULD HAVE CERTAIN OBJECTIONS THAT I WOULD LIKE TO PLACE ON THE RECORD CONCERNING THE WORDING IN THESE TWO ORDERS.

I DON'T BELIEVE THEY--

THE COURT: WHAT IS YOUR OBJECTION?

MR. FRAIDIN: WELL, COUNSEL, NUMBER ONE, IN THE ORDER HAS PUT PLUS COSTS. THE COURT OF SPECIAL APPEALS HAS ALREADY MADE THEIR DETERMINATION OF HOW COSTS SHOULD BE APPORTIONED IN THIS CASE. I AM NOT SURE IF THAT WAS SENT BACK FOR REMITTITUR CONSIDERATION, YOUR HONOR.

ALSO, I BELIEVE IN THE ORDER GRANTING CONDITIONAL NEW TRIAL OR IN THE ALTERNATIVE A REMITTITUR, I AM NOT CLEAR AS TO WHAT THE LAST THREE SENTENCES MEAN. THE DEFENDANT SHALL BE GRANTED A NEW TRIAL ON THE ISSUE OF THE AMOUNT OF PUNITIVE DAMAGES ONLY AGAINST EITHER PLAINTIFF WHO DOES NOT CONSENT --

THE COURT: WHEN YOU HAVE A REMITTITUR, MR. FRAIDIN, IT IS UP TO THE COURT TO DETERMINE HOW MUCH OF THE AWARD SHOULD BE REMOVED OR REMITTED.

MR. FRAIDIN: YES, YOUR HONOR.

THE COURT: IF THE PLAINTIFF DON'T AGREE TO IT, THEN A NEW TRIAL CAN TAKE PLACE.

MR. FRAIDIN: RIGHT, BUT --

THE COURT: A REMITTITUR IS A CONDITIONAL

MATTER.

MR. FRAIDIN: IN HERE IT SAY THE DEFENDANTS SHALL BE GRANTED A NEW TRIAL. THE DEFENDANTS ON THE ISSUE OF THE AMOUNT -- ONLY AGAINST THE PLAINTIFF WHO DOESN'T CONSENT.

THE COURT: BUT THEY ARE CONSENTING TO IT, SO IT IS NOT CONDITIONAL ONCE THEY CONSENT.

IF THEY THEN SAID THAT THEY DID NOT AGREE TO THE REMITTITUR, THEN A NEW TRIAL COULD OCCUR.

MR. FRAIDIN: THEY COULD REQUEST A NEW TRIAL.

WELL, AS LONG AS IT DOESN'T PROHIBIT ME FROM MY RIGHTS.

THE COURT: OF COURSE NOT, MR. FRAIDIN.

MR. O'DOHERTY: FINALLY, YOUR HONOR, WE SUBMIT AN ORDER NOW THAT THOSE -- I THINK THAT BOTH OF THOSE DOCUMENTS HAVE BEEN SIGNED.

THE COURT: YES.

MR. O'DOHERTY: WE SUBMIT A FINAL ORDER -- FINAL JUDGMENT, ORDER OF MODIFICATION, FINAL JUDGMENT.

MR. FRAIDIN: I BELIEVE THAT'S THE PART THAT SAYS PLUS COSTS, YOUR HONOR.

THE COURT: AND I AGREE TO THE PLUS COSTS. THEY ARE THE PREVAILING PARTY.

MR. FRAIDIN: YOUR HONOR, WHAT COSTS WOULD THOSE BE?

THE COURT: WHATEVER THE COSTS MAY BE. I DON'T KNOW. YOU'D HAVE TO CHECK WITH THE CLERK'S OFFICE TO DETERMINE WHAT COSTS IF ANY THERE ARE.

MR. FRAIDIN: THOSE COSTS WOULD NOT BE IN CONFLICT WITH WHAT THE COURT OF --

THE COURT: NO, MR. FRAIDIN.

MR. FRAIDIN: THANK YOU, YOUR HONOR.

THE COURT: HAVE THAT INCLUDED IN THE COURT FILE. THAT WAS INCLUDED AS AN EXHIBIT BY MR. O'DOHERTY.

ANYTHING ELSE, GENTLEMEN?

MR. O'DOHERTY: NO, YOUR HONOR.

THE COURT: AS USUAL, IT'S BEEN VERY INTERESTING.

MR. MOORE, DO YOU HAVE THE COURT FILE HERE?

THE CLERK: NO, I DON'T.

THE COURT: I WANT MR. WEITZMAN'S MEMORANDUM TO BE ATTACHED TO THE COURT FILE, SO SEE -- IF IT ISN'T THAT IT IS ATTACHED.

<u>CONCLUSION</u>

REPORTER'S CERTIFICATE

I, LESLIE ELISE GROSS, AN OFFICIAL COURT REPORTER OF THE CIRCUIT COURT FOR BALTIMORE CITY, DO HEREBY CERTIFY THAT I RECORDED STENOGRAPHICALLY THE PROCEEDINGS IN THE MATTER OF ANDRE WEITZMAN, ET AL VS. JACOB FRAIDIN, ET AL IN THE CIRCUIT COURT FOR BALTIMORE CITY ON FEBRUARY 25, 1993.

I FURTHER CERTIFY THAT THE FOREGOING PAGES CONSTITUTE THE OFFICIAL TRANSCRIPT AS TRANSCRIBED BY ME FROM MY STENOGRAPHIC NOTES TO THE WITHIN COMPUTER-AIDED TRANSCRIPT IN A COMPLETE AND ACCURATE MANNER.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 17TH DAY OF MARCH, 1993.